Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOANNE N. YUHASZ, CSR, RPR., Petitioner.,

v.

DEBORAH T. PORITZ, et als., Respondents.

On Petition for Writ of Certiorari To United States Court of Appeals For The Third Circuit

TO PETITION FOR WRIT OF CERTIORARI

Joanne N. Yuhasz, CSR, RPR.
188 Camden Road
Parsippany, New Jersey 07054
(973) 887-7966
Petitioner

QUESTIONS PRESENTED

1. Whether §301 of the Labor Management Relations Act (LMRA) confers exclusive Federal Jurisdiction on the subject matter issue of the violation and interpretation of a Collective Bargaining Agreement entered into between Judicial Appointments and Judiciary Employer, who are not subject to collective bargaining, preempting State Contract Law?

   Or in the alternative

   Whether Federal jurisdiction is mandated pursuant to the rationale of the United States Supreme Court as enunciated in *Kugler v. Helfant*, 421 U.S. 117 (1975)?

2. Whether the decisions in this case by the United States Court of Appeals for the Third Circuit and the United States District Court for the District of New Jersey are in conflict with the United States Supreme Court and Third Circuit precedent consistently holding that it is reversible error to convert Rule 12(b)(6) motions to Rule 56 Summary Judgment motions without notice to the litigant opposing the motions to dismiss, mandating reversal of the dismissal of the complaints in this case?

3. Whether the United States and New Jersey Constitutions and the "New Jersey Civil Rights Act" require the appointment of legal counsel for disabled civil rights "whistleblower" litigants facing a potential injunction/bar order at an Order To Show Cause (quasi-contempt) hearing which resulted in an order to be enforceable by contempt penalties and resulting in sanctions mandating appellate review and the vacating of injunction by this Court?

4. Whether the Federal (and State) Summary Judgment Rule is an unconstitutional violation and deprivation of the First, Seventh (right to jury trial) and Fourteenth Amendments of the United States Constitution and New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 *et seq.*?

PARTIES TO PROCEEDINGS BELOW

As permitted by the holding of the United States Supreme Court in *Forester v. White*, 484 U.S. 219 (1988) and New Jersey Statutes Annotated N.J.S.A. 10:5-1 *et seq.*, (State waives sovereign immunity), the parties to the proceedings below are:

Petitioner:

Joanne N. Yuhasz, CSR, RPR.

Petitioner's Employer:

Chief Justice Deborah T. Poritz, Honorable James J. Ciancia (Administrative Director) Judiciary of the State of New Jersey, Administrative Office of the Courts.

Petitioner's Co-Employees:

Honorable Reginald Stanton (Judicial Administrative Supervisor), Honorable Paulette Sapp-Peterson, J.S.C., Honorable Donald S. Goldman, J.S.C., Honorable Theodore A. Winard, J.S.C., Honorable Ariel A. Rodriguez, J.A.D., Honorable Steven L. Lefelt, J.A.D., Honorable Joseph F. Lisa, J.A.D., Honorable Sylvia B. Pressler, P.J.A.D., Honorable James J. Petrella, J.A.D.,

Official Court Reporters of the Judiciary of the State of New Jersey 1974-Present, Susan Scardilli, CSR, Edward J. Zajkowski, CSR.

Petitioner's Collective Bargaining/Legal Representatives and Participants In The Association-In-Fact RICO Enterprise:

Certified Shorthand Reporters Association of

New Jersey (CSRA/NJ), CSRA/NJ Collective Bargaining Negotiating Committee, CSRA/NJ Official Court Reporters Unit.

Office & Professional Employees International Union, AFL-CIO, Local 32, Local 32/O.C.R.
Patrick J. Tully
Lois Cuccinello
Stephen S. Weinstein, Esq./P.C.
Bruce D. Leder, Esq. and Schneider, Goldberger, Cohen,Finn, Solomon, Leder & Montalbano, P.C.
Joel S. Selikoff, Esq., Michael C. Damm, Esq. and Selikoff & Cohen, P.A.
William J. Courtney, Esq.
Keith A. McKenna, Esq, Anthony P. Ambrosio, Esq., and Ambrosio, Kyreakakis, DiLorenzo, Moraff & McKenna.
Bruce A. Seidman, Esq. and DeVeaux & Seidman.
Robert F. Henninger, Esq. and Spear, Wilderman, Borish, Endy, Spear & Runckel, P.C.
Christopher J. Carey, Esq.
Tompkins, McGuire, Wachenfeld & Barry, LLP
John C. Kennedy, Esq. and O'Donnell, Kennedy, Vespole & Piechta
Andrew N. Kessler, Esq. and Hoagland, Longo, Moran, Dunst & Doukas.

State Agencies:

Peter C. Harvey, Attorney General of the State of New Jersey and the Office of the Attorney General and the Public Employment Relations Commission (PERC)

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§185. Suits by and against labor organizations

(a) Venue, amount, and citizenship.
Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

New Jersey Constitution, Article VI, Judicial

Section VII

1. The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State. He shall appoint an Administrative Director to serve at his pleasure

New Jersey Statutes

New Jersey Statutes

2A:11-11. Court Reporters; Appointment; Removal

The Supreme Court shall appoint such number of official court reporters (referred to in this article as reporters), to serve on a full-time basis, as may be necessary from time to time to report proceedings in the Superior Court, the County Courts, and such other proceedings as the Supreme Court may direct. The Supreme Court may remove any reporter so appointed at any time for cause.

2A:11-12 Certified Shorthand Reporter; Oath

A reporter to be appointed under this article shall be a certified shorthand reporter holding a certificate, as such, issued by the state board of shorthand reporting, and he shall take an oath to perform his duties faithfully.

2A:11-13 Assignment; Designation of Supervisors and Assistant Supervisors for Districts

(a) A reporter appointed as provided in this article shall be assigned by the administrative director of the courts (referred to in this article as the director), with the approval of the Chief Justice, to report proceedings in one or more of the divisions of the Superior Court, or parts thereof, or in one or more of the County Courts, or to report such other proceedings as the Supreme Court may

direct. Such an assignment may be changed from time to time as occasion may require.

New Jersey Statutes Annotated

2B:7-1 Reporting of court proceedings; court reporters

a. The Supreme Court shall provide for the reporting of all proceedings in the Superior Court and any other proceedings it directs by the use of court reporters or any other means it directs. Court reporters shall be appointed by the Administrative Director of the Courts.

2B:7-2 Assignment; designation of supervisors

a. A reporter shall be assigned by the Administrative Director of the Courts, with the approval of the Chief Justice, to report proceedings as the Supreme Court may direct. Such an assignment may be changed from time to time as occasion may require.

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PETITION FOR WRIT OF CERTIORARI

This Court granted certiorari on the issue of jurisdiction as it related to the "domestic relations" and "probate" exceptions and recently ruled that this Court is, in effect, mandated to accept jurisdiction to resolve the question of whether the legal issue is under Federal or State jurisdiction. *Marshall v. Marshall*, No. 04-1544, 547 U.S. _____ (2006), 126 S. Ct. 1735 (2006).

In this Court's holding in *Marshall*, Justice Ginsburg stated in pertinent part:

> "In *Cohens v. Virginia*, Chief Justice Marshall famously cautioned: 'It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction, if it should . . .
> We have no right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.' 6 Wheat. 264, 404 (1821)"

This Court's holding was correct because this Court, by it's ruling in *Marshall*, took judicial notice that when a State Court does not have subject matter jurisdiction over a litigant's legal cause of action, then any and all orders entered by that State Court are null and void; thereby violating the litigant's constitutional rights to be heard and due process.

By Order entered and filed on March 24, 2006

(A-137), Petitioner's State Court CEPA whistleblower Complaint 1623/1778/[1] was placed on the "Inactive List" by consent pending resolution of the jurisdictional issue by this Court and whether the issues cited in Petitioner's State Court complaint must be filed under the Federal jurisdiction by amending Petitioner's Federal Court RICO complaints to include those issues pursuant to the Entire Controversy Doctrine.

By way of this petition, Petitioner seeks the following relief: (1) Resolution by this Court as to whether the Federal Court has exclusive subject matter jurisdiction over the Petitioner's pending State Court Complaint 1623/1778; (2) Reversal/Appellate Review of the opinions and orders of the United States District Court for the District of New Jersey and Third Circuit Court of Appeals summarily dismissing Petitioner's Federal RICO Complaints 2750/1508 on the merits without providing Petitioner an opportunity to be heard in opposition; and (3) Vacating Injunction issued against Petitioner.

Because Petitioner was denied the opportunity to be heard in the District Court and Third Circuit in opposition to Rule 56 Summary Judgment motions, and the complete appellate record is available to this Court, Petitioner will refer to a minimal amount of documents contained in the appellate record using their appellate

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[1]Complaint MER-L-1623-00 is now under Docket No. BUR-L-1778-04 and will be referred to in this petition interchangeably as "1623" or "1623/1778."

citations.[2]

State Court Complaint 1623/1778

After the April 24, 2002 opinion by the New Jersey State Appellate Division reversing the Trial Court's summary judgment dismissal of Complaint 1623/1778, Petitioner was granted partial summary judgment on April 25, 2003 declaring Petitioner to be handicapped as defined in the New Jersey Law Against Discrimination (NJLAD) N.J.S.A. 10:5-1 *et seq.* It was at this time that Petitioner learned that the New Jersey State Court did not have subject matter jurisdiction over her complaint thereby rendering any judgments entered in Petitioner's favor null and void and all subsequent judgments vulnerable to dismissal on any future post-trial motions to dismiss for lack of subject-matter jurisdiction.

Since Complaint 1623/1778 had been pending in State Court since June 1995 and had never been affirmatively prosecuted through the discovery process by Petitioner's legal counsel before being summarily dismissed in September 2000, it could not be removed to Federal Court by Petitioner , who was the plaintiff, after it was fully re-instated by the Appellate Division.

In an attempt to correct the jurisdictional problem, Petitioner cited the allegations of State Court Complaint 1623/1778 in her t[illegible]ely-filed Federal Court

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[2]Throughout this Petition, citations to the Third Circuit Appellate Appendix Volumes take the form "volumeApage."

RICO Complaints 2750/1508 which cited admitted allegations of an illegal labor union takeover resulting in a monetary theft/extortion to Petitioner and others similarly situated.

The core issue in Petitioner's State Court Complaint1623/ 1778 - and the underlying motive for the admitted illegal labor union takeover and monetary theft/extortion in Petitioner's Federal RICO Complaints 2750/1508 - is the violation and interpretation of Article VII of Petitioner's then Collective Bargaining Agreement (CBA).

The violation of Article VII of the CBA has been admitted to have been committed by Petitioner's employer, the Judiciary of the State of New Jersey, but the interpretation remains a hotly-contested issue. Since the interpretation involves the administrative functions of the Chief Justice as Petitioner's employer, Petitioner is unable to obtain a fair and impartial hearing in the State Court before Petitioner's former co-employees who are State Superior Court Judges.

Federal Jurisdiction

This Court's intervention is needed to clarify the scope of Federal jurisdiction pursuant to §301 of the Labor Management Relations Act ("LMRA") and whether it confers exclusive subject matter jurisdiction in the Federal Court of Petitioner's State Court Complaint 1623/1778. §301 of the LMRA is a Federal statute and not a judicially created doctrine. As a Federal statute pertaining to Federal Labor Law, it

confers exclusive subject matter jurisdiction in the Federal Court.

This Court's intervention is further needed to decide whether it is mandated to confer Federal jurisdiction on all of Petitioner's claims pursuant to this Court's holding in *Kugler v. Helfant*, 421 U.S. 117 (1975) because the objectivity of the entire New Jersey court system has been irretrievably impaired so far as Petitioner's litigation is concerned.

The failure of the Third Circuit and District Court to address these crucial issues has here permitted a Federal Court to dismiss Petitioner's timely-filed Federal RICO Complaints 2750/1508 of an admitted illegal labor union takeover resulting in a monetary theft and extortion solely based on State Court orders which are null and void because the State Court lacked subject matter jurisdiction.

By this Court's rulings in *Marshall* and *Kugler*, this Court must grant certiorari to resolve the jurisdictional question presented to this Court in this petition.

Summary Judgment Rule

This Court has never addressed the constitutional deprivations of the Federal and State Summary Judgment Rules when they are misapplied by the Federal and State Courts. The manner in which the Federal and State Courts utilized the Summary Judgment Rules in this case make this issue more than ripe for this Court's intervention and clarification.

On motions to dismiss the RICO allegations in Federal Complaint 2750 pursuant to Fed. R. Civ. Proc. 12(b)(6) for failing to state a cause of action, the District Court Judge ruled that Petitioner's Complaint 2750 stated a RICO cause of action (A-8 to A-9), then *sua sponte* committed reversible error by converting the 12(b)(6) motions to Rule 56 Summary Judgment motions without notice to Petitioner mandating complete reversal by this Court (A-10 to A-52).

The District Court ruled - and the U.S. Court of Appeals affirmed (A-119 to A-133) - that Petitioner's Federal RICO Complaints 2750/1508 stated a RICO cause of action in connection with the 12(b)(6) dismissal motions. The District Court - and the U.S. Court of Appeals - then *sua sponte* converted the 12(b)(6) dismissal motions to Rule 56 Summary Judgment motions without notice to Petitioner and denying Petitioner the opportunity to be heard in opposition. This action by the District Court - and the U.S. Court of Appeals - was reversible error based on Third Circuit precedent. The District Court further denied Petitioner's request for time to file a motion to amend the complaint. This action was further contrary to Third Circuit precedent.

This Court has ruled that the Federal constitutional rights of a criminal defendant are violated by an evidence rule under which the defendant may not introduce evidence of third-party guilt if the prosecution has introduced forensic evidence that, if believed, strongly supports a guilty

verdict. *Holmes v. Couth Carolina*, No. 04-1327, 547 U.S. (2006).

The same is true for civil litigants who are denied the opportunity to present evidence in opposition to a Rule 56 Summary Judgment motion. By its very nature, Rule 56 mandates a "factual review" by a Court - not a jury - thereby violating and depriving a civil litigant of their rights under the First, Seventh and Fourteenth Amendments of the United States Constitution.

Petitioner was denied the right to be heard in opposing the summary judgment dismissals of her Federal RICO Complaints 2750/1508 on the merits by the District Court and Third Circuit. Petitioner's right to be heard in opposing summary judgment before this Court is further violated because this Court does not have Petitioner's evidence before it because Petitioner was denied that right to submit evidence opposing summary judgment in the District Court and Third Circuit below.

Petitioner's constitutional rights are further being violated before this Court because this Court will no doubt just review the decisions of the District Court and Third Circuit which incorrectly cite and rely on the facts of Petitioner's State Court Complaint 1623/1778 which was not formally before them as it is still pending in State Court.

This Court should take this opportunity to succinctly clarify the application of Rule 56 Summary

Judgment and grant certiorari for Appellate Review.

Petitioner Is Not Seeking Injunctive Relief

The illegal labor union takeover and monetary theft/extortion began in May/June 1995 and continues to this day and will continue into the future. During the years 1995 to 2000, others similarly situated supported Petitioner's efforts to expose and rectify this illegal union takeover because they were afraid of retaliation if they did it on their own (4A687to 4A740).

In the year 2000, Petitioner was illegally constructively discharged without being afforded a due process hearing. Due to the fact that for the past ten to eleven years, Petitioner has continually been deprived of her due process right to be compensated for past illegal violations, and others similarly situated are too afraid to contest the illegal union takeover on their own because of their witnessing the retaliation suffered by Petitioner, Petitioner is not seeking any injunctive relief for their benefit.

OPINIONS BELOW

The "Not Precedential" opinion of the United States Court of Appeals for the Third Circuit is unreported and attached hereto (A-119 to A-133). The "Not For Publication" opinions of the United States District Court for the District of New Jersey are unreported and attached hereto (A-1, A-10, A-25, A-52, A57, A-66). The "Not For Publication" opinions of the United States District Court for the District of New

Jersey entering an "Order To Show Cause" hearing and "Injunction" are attached hereto (A- 89, A-90 to A-105).

JURISDICTION

The United States Court of Appeals for the Third Circuit issued its opinion on February 15, 2006 (A-119 to A-133). It denied rehearing and rehearing *en banc* on April 21, 2006 (A-135). This Court extended Petitioner's time within which to file this Petition for a Writ of Certiorari to August 20, 2006.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). Jurisdiction was proper in the District Court and Court of Appeals pursuant to 28 U.S.C. §§1331 and 1334.

STATEMENT OF THE CASE

On or about March 6, 19974, the Supreme Court of New Jersey entered an order pursuant to New Jersey Statute N.J.S. 2A:11-11, as amended, permanently appointing Petitioner Joanne N. Yuhasz, CSR, RPR. ("Yuhasz") as an Official Court Reporter ("OCR") on a full-time basis and temporarily assigned to the County of Essex pending an opening in her home County of Morris. N.J.S. 2A:11-11, N.J.S.A. 2B:7-1(a). (3A556, 3A557)

The Certified Shorthand Reporters Association of New Jersey ("CSRA/NJ") is a not-for-profit professional organization of individual members involved in or affiliated with court reporting in the

State of New Jersey. Its purpose is to provide leadership in advancing the interests and general welfare of the profession, to promote unity and cooperation, to advocate for high standards of professional practice and provide opportunities for continuing education (3A546-547, ¶69). CSRA/NJ also acted in a fiduciary and collective bargaining capacity on behalf of Yuhasz and others similarly situated (3A539, ¶¶12 to 16; 3A558)

The State of New Jersey Judiciary ("Judiciary") recognized CSRA/NJ as the exclusive representative for collective negotiations for wages and other terms and conditions of employment for the full-time Official Court Reporters ("OCRs") in their independent contractor status because their terms and conditions of employment were controlled by statute pertaining to their judicial appointment/employee status.

In the July 1, 1989 to June 30, 1992 agreement between the Judiciary and CSRA/NJ, Article VII provided in pertinent part:

> "Transfers. An official court reporter may request a transfer within the Judiciary by submitting an application in writing stating the reasons for the request through his/her supervisor to the Chief of Court Reporting Services. Any special hardship that may result will be given due consideration. Transfers shall not affect the accumulation of an employee's State or job classification. Upon transfer, all accrued compensatory time will, at the

discretion of the supervisor, be transferred with the employee or taken as time off prior to the transfer."

In or around April 1975, Yuhasz was re-assigned to the County of Morris upon her filing a formal request pursuant to Article VII which was granted. From April 1975 and subsequent thereto, Yuhasz performed her job extremely competently and achieved recognition for her job performance by consistently receiving "outstanding" and "competent" performance evaluation ratings in addition to receiving unsolicited written correspondence from attorneys and pro se litigants commending Yuhasz for her prompt, efficient and courteous professionalism pertaining to the timely filing of transcript orders and Yuhasz became the first OCR in the Morris/Sussex vicinage to utilize computer-aided transcription for the timely and expeditious production of transcripts (5A925, ¶¶24-27).

In or around October 1989, Yuhasz began being subjected to a hostile work environment after she contacted the Judiciary to rectify false performance evaluations being issued against her by the supervisors. The Judiciary was informed by the supervisors that they wanted Yuhasz out and couldn't get her out unless they issued false performance evaluations (5A926, ¶¶31).

In or around May/June 1991, Yuhasz retained legal counsel Stephen S. Weinstein, Esq., ("Weinstein") who filed a grievance on her behalf to rectify her false performance evaluations and oppose an involuntary transfer because CSRA/NJ refused Yuhasz's requests

for assistance (5A924 to 5A943).[3] During Weinstein's representation of Yuhasz, the Labor Counsel for the Judiciary informed the Morris County Administrators that they were going to lose the hearing and contacted Weinstein to schedule a hearing conference where the Judiciary Labor Counsel would resolve Yuhasz's grievance in her favor. Weinstein refused to schedule the hearing conference, and in October 1992, forwarded a letter to Yuhasz advising her that he would no longer represent her (5A938, ¶¶140-146).

Beginning December 1992/January 1993, Yuhasz retained Bruce D. Leder, Esq., ("Leder") who agreed to represent her in a private individual capacity on her pending grievance while he simultaneously represented CSRA/NJ as their labor counsel. At the same time, Leder's law firm was labor counsel to Local 32 (5A940; 5A942 to 5A943). During Leder's representation, Yuhasz was diagnosed with suffering from Major Clinical Depression, Fibromyalgia, arthritis and stress during which time Leder never scheduled a timely hearing on her pending grievance as he continually pressured Yuhasz into consenting to be

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[3] During the years 1989 to 2000, Yuhasz has been represented by legal counsel as follows:
1989 to 1992 - Stephen S. Weinstein, Esq. (grievance); 1992 to 1995 - Bruce D. Leder, Esq., (grievances and who simultaneously represented CSRA/NJ and Local 32 OPEIU); 1995 to 1996 - Joel S. Selikoff, Esq., and Michael C. Damm, Esq.,(Complaint 2514) and William J. Courtney, Esq., (PERC Complaints); 1996 to 1998 - Keith A. McKennz, Esq., and Anthony P. Ambrosio, Esq.(Complaints 2514 (employment), 1452 (legal malpractice) and PERC complaints); 1999 to 2000 - Fred Shahrooz Scampato, Esq., and Joseph S. Murphy, Esq. (Complaints 2514 and 1623/1778)

transferred from her seniority position in Morris County (5A944, ¶¶197-198; 5A945, ¶¶199-202).

Affiliation By And Between CSRA/NJ And Local 32 OPEIU

On or about June 28, 1994, Kathleen M. Shapiro, President of CSRA/NJ ("Shapiro"), Susan Scardilli, President-Elect of CSRA/NJ ("Scardilli") and Patrick J. Tully, ("Tully") Business Manager of Local 32 OPEIU entered into an affiliation agreement: (5A947)

Pursuant to this Affiliation Agreement, CSRA/NJ would still be acting in a fiduciary capacity as the Collective Bargaining Representative of the OCRs, but would be assisted in that position by Local 32. Even though this affiliation was solely between CSRA/NJ and Local 32, appended to the Affiliation Agreement was a document outlining "Terms For A Possible Affiliation" between the OCRs and Local 32 (3A574; 5A948).

Term Number (m) 11 specifically stated in pertinent part: (3A574; 5A949)

> "Any affiliation between the parties shall be effective for one year from the date of execution. Thirty days prior to the expiration, the Official Court Reporters shall review and assess compliance by O.P.E.I.U. with the agreement, and shall determine by majority vote of Official Court Reporters whether to renew affiliation on a permanent basis."

On or about July 22, 1994, a Representation Petition was filed with the Public Employment Relations Commission ("PERC") designating CSRA/NJ as the "recognized or certified majority representative" of the unit of Official Court Reporters and that CSRA/NJ was being affiliated with Local 32 (3A575).

Pursuant to Term Number (m) 11 of the "Terms For A Possible Affiliation," (3A574; 5A949), if there was to be any change in affiliation, then an "Amendment Of Certification Petition" was required to be filed with PERC and supported by a majority vote in favor of the change in affiliation (1A193, 3A576, 3A577).

Fraudulent Alteration Of Article VII

While still being represented by Leder at the Step 3 hearing of pending grievances, Yuhasz consulted with legal counsel Joel S. Selikoff, Esq. ("Selikoff") who advised her to file a formal Notice of Intent -- which she did on or about April 1, 1995 -- citing allegations emanating out of the hostile work environment and sexual discrimination that she had been suffering under since October 1989 (5A951 to 5A952). Selikoff further advised Yuhasz to retain another attorney to file Unfair Practice Charges with the Public Employment Relations Commission ("PERC"). Yuhasz retained legal counsel William J. Courtney, Esq. ("Courtney") who filed Unfair Practice Complaints with PERC on her behalf in October 1995 (5A953).

On or about May 29, 1995, Scardilli told Yuhasz that she (Yuhasz) was going to be transferred (5A954,

¶¶281 to 288.) On or about May 30, 1995, Cuccinello and Local 32 forwarded a copy of the "executed" 7/1/92-6/30/95 CBA which had previously been ratified in October 1994, signed by CSRA/NJ in December 1994 and previously forwarded to the AOC Judiciary in January 1995 (5A955, ¶289 to 291).

On Friday, June 2, 1995, the AOC Judiciary received the copy of the "executed" 7/1/92-6/30/95 CBA from Cuccinello and Local 32. On Friday, June 2, 1995, Jeffrey A. Newman ("Newman") AOC Chief of Reporting Services immediately forwarded a letter to Yuhasz dated June 2, 1995 which Newman immediately sent three ways; i.e., faxed to Yuhasz at the Morris County Courthouse and to her home via regular and certified mail which stated:

> "This will serve as notification that as of June 19, 1995, you will be permanently assigned to the Passaic vicinage. Article VII of the agreement between the Judiciary, State of New Jersey, and the Certified Shorthand Reporters Association provides for transfers at the discretion of the Judiciary. Article VII states: The Judiciary may, at its discretion, transfer an Official Court Reporter from one vicinage to another.'"

On or about June 2, 1995, while still being represented by Leder on pending grievances, Yuhasz immediately contacted Selikoff for legal assistance advising him that Yuhasz and the OCR membership were never informed of this illegal alteration of Article VII and they never issued a majority vote to ratify any

alteration to Article VII which would be in conflict with the New Jersey Constitution and statutes . Selikoff advised Yuhasz to file a grievance against the implementation of the involuntary transfer. Selikoff further advised Yuhasz that he (Selikoff) would represent her at a grievance hearing contesting her being involuntarily transferred (5A956, ¶¶299 to 301)

On or about June 7, 1995, Yuhasz filed a grievance contesting the disciplinary permanent transfer issued by Newman and forwarded a written communication to Tully, Cuccinello and Local 32 attaching a copy of her June 7, 1995 grievance contesting her transfer from Morris County (5A956, ¶302; 5A957, ¶303). Tully, Cuccinello and Local 32 never contacted Yuhasz nor did they assist Yuhasz in contesting her involuntary transfer which was in violation of State Law. Selikoff agreed to file and represent Yuhasz on an emergency Temporary Restraining Order (TRO) application. Yuhasz informed Selikoff that the provision in Article VII that Newman was relying on to transfer her was never ratified by the OCRs (5A597, ¶¶306 to 307).

By letter dated June 9, 1995, Newman answered Yuhasz's 6/7/95 grievance at Step 2 by stating in pertinent part that:

> "The transfer was conducted under the Agreement between the Judiciary - State of New Jersey and the Certified Shorthand Reporters Association of New Jersey. The Agreement from which the transfer is permitted is dated July 1,

1992 - June 30, 1995. Article VII of this Agreement states: The Judiciary may, at its discretion, transfer an official court reporter from one vicinage to another.'"

On or about June 16, 1995, Selikoff filed an Order To Show Cause with a Verified Complaint under Docket No. MER-L-2514-95 ("2514") challenging the involuntary transfer being conducted under the illegal and non-ratified Article VII of the 7/1/92-6/30/95 CBA (3A578; 3A586; 3A590; 3A606-607). Selikoff contacted Leder to obtain a copy of the 7/1/92-6/30/95 CBA. Leder sent Selikoff an unsigned copy of the 7/1/89-6/30/92 CBA with a cover stating that it was the 7/1/92-6/30/95 CBA. Article VII as contained in this copy did not cite the "Transfer Clause" that Newman relied on in his 6/2/95 letter as the authoritative basis for the AOC Judiciary involuntarily transferring Yuhasz (3A586; 3A590; 3A606-607). All of a sudden, Selikoff advised Yuhasz that she could only file a TRO requesting temporary restraints staying the transfer based on medical hardship (5A958, ¶313). After one year of continually advising Yuhasz that he would represent her and amend her Complaint 2514, Selikoff filed a motion to be relieved as Yuhasz's counsel which was granted.

In or around August 1995, Newman informed six (6) Bergen County OCRs that they were going to be involuntarily transferred out of Bergen County (4A697, ¶21). The Bergen County OCRs filed a grievance contesting the involuntary transfers (4A697, ¶23). The Bergen County OCRs wanted to retain their own legal

counsel to represent them, but Scardilli and Cuccinello told them that they had to use "the Union's attorney" Leder (4A698, ¶24). When the Bergen County OCRs met with Leder, that was the first time that they reviewed a copy of the 7/1/92-6/30/95 CBA and the transfer clause in Article VII (4A698, ¶25). The Bergen OCRs asked Leder how this clause got in the contract, that they had no knowledge that this clause was in there and that it was never mentioned. Leder stated that he put it in (5A960, ¶¶335-343).

In or around October 1995, Yuhasz and other OCRs received a copy of the 7/1/92-6/30/95 CBA from the AOC Judiciary. This copy of the 7/1/92-6/30/95 CBA contained the illegal and non-ratified transfer clause (3A608; 3A614) which stated in pertinent part:

In or around May 1996 at a CBA ratification meeting of the OCR membership, Scardilli and Cuccinello stated "they didn't know" how the clause got into Article VII of the 7/1/92-6/30/95 CBA. Scardilli further stated that "it (transfer clause) shouldn't have been put in the contract" and that "it shouldn't be in there." Scardilli further stated that "it got in without us realizing it" and that "we didn't know it was in there" (4A694, ¶12; 5A963, ¶¶379-382). The OCR membership did not ratify the proposed CBA, and the next morning, twenty (20) OCRs were faxed illegal layoff notices (5A963, ¶¶383-384).

In or around July 1996, Yuhasz retained legal counsel Keith A. McKennz, Esq. ("McKenna") and Anthony P. Ambrosio, Esq., ("Ambrosio") who filed an

Amended Complaint 2514 and legal malpractice Complaint MRS-L-1452-96 which was subsequently transferred to Essex County under Docket No. ESX-L-5833-99 ("1452/5833"). McKenna also was representing Yuhasz on the complaints issued by a PERC Hearing Officer on certain charges it initially found to be meritorious against the Judiciary and Local 32 and filed in time and the appeal of the dismissal of the remaing Unfair Practice Charges.

In or around May 1997, the PERC Commission entered an order and decision granting Yuhasz's appeal and re-instating Unfair Practice Charges against the Judiciary, CSRA/NJ and Local 32. In their May 1997 decision and order, the PERC Commission also granted Yuhasz a hearing to determine who the Collective Bargaining Representative was (4A674-679). Subsequent thereto in a "Recommended Decision," the PERC Hearing Examiner stated that the issues pertaining to the "Affiliation Agreement" were not properly before PERC.

In or around July 2, 1997, McKenna filed an Order To Sh w Cause (OSC) with the PERC on Yuhasz's behalf (4A680-682; 4A683-685). During the pendency of Yuhasz's OSC, the Office of the Attorney General unlawfully interfered, threatened and tampered with Yuhasz's witnesses (4A686). In support of her OSC, Yuhasz obtained the support of approximately twenty-three (23) OCRs contesting the position of Local 32 as their Collective Bargaining Representative (4A687-691; 4A692; 4A714-724; 4A726-734)

In or around September 1997, the Chair of the PERC Commission advised five (5) OCRs that Unfair Practice Charges relating to the questioned position of who was the Collective Bargaining Representative and the signing of the 7/1/92-6/30/95 CBA were currently pending and all allegations will be reviewed as the case progresses (4A736-740).

At the scheduled date of Yuhasz's OSC, McKenna refused to proceed with the OSC relating to having Local 32 show cause that they were legally ratified by a majority vote of the OCRs. At the end of the aborted OSC hearing, a representative of the AOC Judiciary handed Yuhasz an unofficial copy of the 7/1/95-6/30/99 CBA. This unofficial copy of the 7/1/95-6/30/99 CBA reflected that it was now an "Agreement Between the New Jersey State Judiciary and Office and Professional Employees International Union - Official Court Reporters Unit." (4A741)

In the beginning of 1998, McKenna and Ambrosio were relieved as Yuhasz's legal representatives on Complaints 2514 and 1452/588 and a year later by PERC.

During the period beginning July 1999 and subsequent, Yuhasz was represented by legal counsel Fred Shahrooz Scampato, Esq. and Joseph S. Murphy, Esq. on Complaints 2514 and 1623/1778. On September 12, 2000, Complaints 2514 and 1623/1778 were dismissed by Mercer County State Superior Court Judge Paulette Sapp-Peterson. After the dismissal of

Complaints 2514 and 1623/1778 Yuhasz's causes of action were systematically dismissed by a variety of judges, including, but not limited to (1) November 9, 2000, Legal Malpractice Complaint 1452/5833 was dismissed by Essex County Judge Donald S. Goldman; (2) August 8, 2001, Complaint 3281 was dismissed by Essex County Judge Edith K. Payne dismissing McKenna and Ambrosio; (3)January 18, 2002, Complaint 3281 was dismissed by Essex County Judge Theodore A. Winard dismissing McKenna (PERC), CSRA/NJ and Local 32.

Federal Court RICOComplaints 2750/1508

On or about June 9, 2003, Yuhasz filed a Complaint and Jury Demand under Case No. 03-02750 ("2750") (2A255) alleging *inter alia* an admitted illegal union takeover and monetary theft/embezzlement in violation of Federal and New Jersey RICO which was assigned to District Court Judge Dickinson R. Debevoise ("Judge Debevoise").

The initial Complaint 2750 not only sued the Judiciary and a few attorney defendants under RICO relating to their participation in the coverup of the violation of the CBA and illegal union takeover, but also cited Yuhasz's employment allegations in an attempt to bring the subject matter of her State Court Complaint 1623/1778 under Federal jurisdiction.

In Complaint 2750, Yuhasz requested to be permitted to file a RICO Case Information Statement and cited some RICO allegations admitted by CSRA/NJ and Local 32/OCR when they had filed their

summary judgment motions to dismiss Complaint 3281. Because of her pro se status, Yuhasz attached a copy of Complaint 3281 which contained the admitted factual allegations in support of her RICO allegations of the fraudulent altering of Article VII and the subsequent illegal union takeover. [5A924 to 5A946]; [5A947 to 5A949] ; [5A949, ¶¶230-231]; [5A954, ¶278]; [5A959, ¶326]; [5A960, ¶343]; [5A963, ¶¶379-381];

On or about October 14, 2003,Yuhasz filed Amended Complaint 2750(2A270) which added and included the main participants of the illegal union takeover. Amended Complaint 2750 was first served on the Defendants who were previously served with the initial Complaint 2750 and they immediately filed motions to dismiss for failure to state a claim pursuant to Fed. R. Civ. Proc. 12(b)(6) (1A15, 2A314).[4]

By letters dated December 11, 2003 (2A339) and December 13, 2003 (2A341), Yuhasz contacted Judge Debevoise and requested that all dispositive motions be stayed until after all defendants have been served. Yuhasz also requested to be permitted to file a RICO Case Statement in opposition to all dispositive motions (2A339). By letter dated December 17, 2003, Judge Debevoise denied Yuhasz's requests (2A343).

When Yuhasz discovered that Judge Debevoise's court reporter Mollie Giordano ("Giordano") was a

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[4] All other Attorney Defendants either relied on or copied the identical legal points as filed by Defendant Christopher J. Carey, Esq.

defendant and witness in Amended Complaint 2750 and that Defendant New Jersey Attorney General Peter C. Harvey ("Harvey") was Judge Debevoise's former law clerk, Yuhasz filed a timely "Affidavit" and "Certification Of Counsel Of Record" pursuant to 28 U.S.C.A. §144 on January 19, 2004 (1A34, 1A44).

Yuhasz then forwarded a letter to Judge Debevoise dated January 20, 2004 enclosing a copy of the §144 Affidavit and Certification and vehemently objecting to Judge Debevoise hearing and deciding any and all dispositive motions (2A344, 2A345). Yuhasz continually renewed her vehement objection to Judge Debevoise handling any matters in connection with Amended Complaint 2750 (2A346, 2A347). Judge Debevoise denied all of Yuhasz's requests compelling her to file a Voluntary Dismissal Without Prejudice which was filed on February 11, 2004 (1A18) against the defendants who hadn't been served with the amended Complaint 2750. Yuhasz then had to file a new complaint against the remaining Defendants before the statute of limitations for RICO expired in March 2004.

In denying Yuhasz's recusal motion, Judge Debevoise cited in Footnote 3 of his ex parte factual communication with Giordano (A-7) and then ruled on the pending 12(b)(6) motions that Yuhasz had sufficiently stated a RICO cause of action (1A84-85). Then Judge Debevoise *sua sponte* converted the 12(b)(6) motions to Rule 56 summary judgment motions without notice to Yuhasz and dismissed Amended Complaint 2750 (1A86-128) against all defendants citing Yuhasz's litigation history and making findings of fact on the allegations of Yuhasz's State Court Complaint

1623/1778 which was not before him.

On March 31, 2004, Yuhasz filed a Complaint and Jury Demand under Case No. 04-1508 (hereinafter "1508") (3A426) alleging *inter alia* an admitted illegal union takeover and monetary theft/embezzlement in violation of Federal and New Jersey RICO which was assigned to District Court Judge Joel A. Pisano ("Judge Pisano"). Yuhasz included the Defendants who had been dismissed from Amended Complaint 2750 for discovery purposes because Yuhasz had filed a Notice of Appeal of the dismissal of Amended Complaint 2750, which appeal was eventually dismissed for lack of jurisdiction. All Defendants were served. An Answer was filed by Defendant Keith A. McKenna (hereinafter "McKenna") (3A478). Carey immediately filed the same 12(b)(6) motion to dismiss (3A494) and McKenna submitted a letter relying on Carey's motion and brief (3A530). Yuhasz filed motions for default against the Defendants who failed to file a timely responsive pleading.

Judge Pisano ignored all of Yuhasz's motions and/or requests and permitted Defendants to sporadically bombard Yuhasz with 12(b)(6) motions to dismiss and motions seeking a Bar Order to be issued against Yuhasz. Judge Pisano dismissed Complaint 1508 against certain Defendants under the doctrines of *res judicata*, collateral estoppel and Entire Controversy, then Judge Pisano converted the 12(b)(6) motions by the remaining Defendants to Rule 56 summary judgment motions without notice to Yuhasz and dismissed Complaint 1508 in its entirety. Judge Pisano

then issued an Order To Show Cause and Injunction against Yuhasz (1A74; 1A75; 1A142; 1A165).

Yuhasz thereafter filed timely Notices Of Appeal and obtained an Order certifying all orders final (1A2-29). The United States Court of Appeals for the Third Circuit issued its opinion on February 15, 2006 (A-119 to A-133). It denied rehearing and rehearing *en banc* on April 21, 2006 (A-135). This Court extended Petitioner's time within which to file this Petition for a Writ of Certiorari to August 20, 2006.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I. SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT MANDATES FEDERAL JURISDICTION

Section 301 of the Labor Management Relations Act, 1947 (LMRA), 29 U.S.C. §185 has been construed as not only preempting State Law but also authorizing removal of actions that sought relief only under State Law. *Avco Corp. V. Machinists*, 390 U.S. 557 (1968).

State law **cannot preempt** Federal Law. If there is a conflict between the two, it is the State Law, **not the Federal Law**, that is preempted. U.S. Const. Art. VI, cl. 2.

This Court has consistently held that Section 301 of the LMRA preempts State Law claims where the resolution of the State claim substantially depends on the interpretation of terms or provisions of a collective

bargaining agreement or where it is "inextricably intertwined" with consideration of the CBA and further held "that a suit in State Court alleging a violation of a provision of a labor contract must be brought under §301 and be resolved by reference to Federal Law. A State rule that purports to define the meaning or scope of a term in a contract suit therefore is pre-empted by Federal Labor law." *Allis-Chambers Corp. v Lueck*, 471 U.S. 202, 210, 212, 213, 105 S. Ct. (1904) (the interests in interpretive uniformity and predictability that require that labor-contract disputes be resolved by reference to Federal law also require that the meaning given a contract phrase or term be subject to uniform Federal interpretation. Thus, questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement must be resolved by reference to uniform Federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort) ("Clearly, §301 does not grant the parties to a collective-bargaining agreement the ability to contract for what is illegal under State law); *Avco Corp. v. Machinists*, 390 *U.S.* 557 (1968).

Pursuant to the terms of the "Affiliation Agreement," when the illegal union takeover took place, Petitioner was compelled to pay union dues pursuant to Federal Labor Law (3A573, ¶2) and Petitioner's dual status as an employee of the State and independent contractor was pursuant to Federal Labor Law. Where a Federal Cause of action under Section 301 of the LMRA completely preempts a State Law cause of action, the Federal District Court necessarily

has exclusive subject matter jurisdiction over a complaint that asserts causes of action under and arises under Federal Law.

The core and major issues of Yuhasz's pending State Court Complaint 1623/1778 - and State Court Complaint 3281 - are the violation and interpretation of Article VII. This issue falls exclusively under Federal subject matter jurisdiction. Yuhasz cannot remove Complaint 1623/1778 to Federal Court not only because she is the plaintiff, but mainly because an injunction has been issued against her barring her from filing any complaint in Federal Court pertaining to her employment cause of action (A-114).

In Federal Complaints 2750/1508, Yuhasz alleges she was deprived of her 14th Amendment Rights by State Court Judges -- who were her co-employees -- and this question gave the Federal Court original jurisdiction over her cases under Federal Question Jurisdiction, 28 U.S.C. §1331.

Accordingly, subject matter jurisdiction in the District Court was not only proper because of the constitutional violations raised, but under Section 301 of the LMRA, the District Court has exclusive subject matter violation for causes of action grounded in violation of, and requiring interpretation of the CBA and Affiliation Agreement.

II. THIRD CIRCUIT PRECEDENT MANDATES REVERSAL OF THE DISMISSAL OF FEDERAL RICO COMPLAINTS BY THEIR MISAPPLICATION OF SUMMARY JUDGMENT FEDERAL RULE 56

District Court Judge Debevoise ruled that Yuhasz's Amended Complaint 2750 stated a RICO cause of action (1A84)(1A270).

Then Judge Debevoise ***sua sponte*** converted the 12(b)(6) motions to F.R.C.P. 56 summary judgment motions **without notice** to Yuhasz by citing Yuhasz's State Court 1623/1778 facts and not the facts of the RICO illegal union takeover. It appears that Debevoise relied on the employment factual basis of attached Complaint 3281, but Complaint 3281 also contained a detailed factual basis of the fraudulent alteration of Article VII and the illegal union takeover which Debevoise totally ignored.

Third Circuit rule of precedent has "held that it is **reversible error** for a district court to convert a motion under Rule 12(b)(6) or Rule 12(c) into a motion for summary judgment unless the court provides notice of its intention to convert the motion and allows an opportunity to submit materials admissible in a summary judgment proceeding or allows a hearing."[5]

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[5] *Liberty Lincoln-Mercury v. Ford Motor Co.*, 134 F.3d 557, 569 (3d Cir. 1998); *Kachmar v. SunGuard Data Sys., Inc.*, 109 F.3d 173, 183 (3d Cir. 1992). *Rose v. Bartle*, 871 F.2d 331, 342 (3d Cir. 1989) citing *Castle v. Cohen*, 840 F.2d 173, 179-80 (3d Cir. 1988) (vacating summary judgment when the district court

The Third Circuit incorrectly stated the standard of review for Rule 12(b)(6) dismissal motion as de novo review (A-125) when the precedent is clear that the standard of review is plenary and that they were required to accept all allegations as true and attribute all reasonable inferences in favor of Petitioner. *Alston v. Parker*, 363, F.3d 229, 232-233 (3d Cir. 2004); *Ditri v. Coldwell Banker Residential Affiliates, Inc.*, 954 F.2d 869, 871 (3d Cir. 1992).

Yuhasz **did allege threats**. Complaints 2750/1508 alleges threats admitted to by the Defendants because Yuhasz's attachments - which the Third Circuit stated could be relied upon - specifically cited factual allegations which were **admitted by the Defendants** of threats to the judicial appointments of Yuhasz and others similarly situated (5A963, ¶¶383-

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converted the Rule 12(b)(6) motion without notice to the parties); *Davis Elliott Int'l, Inc. v. Pan American Container Corp.*, 705 F.2d 705, 706-08 (3d Cir. 1983) (reversing summary judgment when the district court acted without notice to the parties); *Davis Elliott Int'l, Inc. v. Pan American Container Corp.*, 705 F.2d 705, 706-08 (3d Cir. 1983) (reversing summary judgment when the district court acted without notice to the parties and without an opportunity for hearing); *Crown Central Petroleum Corp. v. Waldman*, 634 F.2d 127, 129 (3d Cir. 1980) (reversing summary judgment when the district court acted without notice to the parties and without allowing an opportunity to submit affidavits); *Bryson v. Brand Insulations, Inc.*, 621 F.2d 556, 559 (3d Cir. 1980) (same). *Gibson v. Mayor And Council Of Wilmington*, 355 F.3d 215, 223 (3d Cir. 2004); *Otis Elevator Co. v. George Washington Hotel Corp.*, 27 F.3d 903 (3d Cir. 1994); *Davis Elliott Intern. v. Pan American Container*, 705 F.2d 705, 707-08 (3d Cir. 1983) ("because the procedure of Rule 56 requiring an opportunity to present pertinent material, which presumes notice to the party so that he may take advantage of the opportunity, was not followed, the entry of judgment must be reversed") (quoting *Bryson v. Brand Insulations, Inc.*, 621 F.2d 556, 559 (3d Cir. 1980); *Bradley v. Pittsburgh Bd. Of Educ.*, 913 F.2d 1064, 1069-70 (3d Cir. 1990) ("[I]n the absence of a formal motion for summary judgment, plaintiff was under no formal compulsion to marshall [sic] all of the evidence in support of his claims"). *Id.* at 910.

384; 5A970, ¶¶448-451; 5A955, ¶287; 2A255; 3A426).

III. INJUNCTION AGAINST PETITIONER VIOLATED PETITIONER'S RIGHT TO DUE PROCESS OF LAW AS PROTECTED UNDER THE CONSTITUTION.

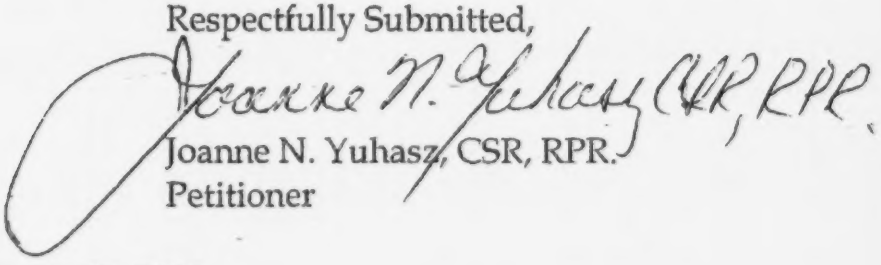
An injunction and/or bar order "is an extreme remedy which must be 'narrowly tailored and sparingly used'." *Abdul-Akbar v. Watson*, 901 F.2d 329, 332 (3d Cir. 1990) citing *Matter of Packer Ave. Assoc.*, 884 F.2d 745, 747 (3d Cir. 1980). An attempt to harass - not just litigiousness - was required to support an injunction. *Pavilonis v.King*, 626 F.2d 1075, 1078-79 (1st Cir.), *cert. denied* 449 U.S. 829, 101 S.Ct. 96, 66 L.Ed.2d 34 (1980).

District Court Judge Pisano and the Third Circuit erred, as a matter of law and abuse of discretion, by issuing an injunction against Yuhasz, a handicapped pro se civil rights litigant, by failing to evaluate and take into consideration certain factors and failing to evaluate and weigh Yuhasz's accurate factual litigation history against the legal standards to be applied. *Safir v. United States Lines, Inc.*, 792 F.2d 19, 24-25 (2d Cir. 1986).

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the Petition for a Writ of Certiorari should be granted to resolve the jurisdictional question and to review the decisions of the United States District Court, District of New Jersey and United States Court of Appeals for the Third Circuit and to vacate the injunction issued against Petitioner.

Respectfully Submitted,



Joanne N. Yuhasz, CSR, RPR.
Petitioner

Dated: August 18, 2006

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NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ, CSR, RPR., Civil Action No. 03-02750

Plaintiff,

-v- OPINION

CHIEF JUSTICE DEBORAH T. PORITZ, *et al.*

RECEIVED
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2004 FEB 24 A 10:57
UNITED STATES
DISTRICT COURT

Ms. Joanne N. Yuhasz

Pro se Plaintiff

DEBEVOISE, Senior District Judge

Before the court is a motion by Plaintiff Joanne N. Yuhasz ("Ms. Yuhasz") requesting that I recuse myself from the above-captioned case.[1] For the reasons that follow, the motion will be **DENIED.**

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[1] Oral argument on this motion was scheduled for Monday, February 23, 2004. On Friday, February 20, 2004, I faxed Ms. Yuhasz a letter reminding her that oral argument would be held the following Monday, and telling her that, if I denied her recusal motion, I would decide the pending motions to dismiss her Complaint on the papers. In

Ms. Yuhasz was a court reporter in the New Jersey state court system until 2000. She alleges the existence of a vast conspiracy- during the period of her employment at the court and after- to silence her, inflict emotional distress on her, and facilitate and then conceal *inter alia,* allegedly improper actions that were taken to enable her involuntary transfer from one vicinage to another in 1995. Involved in this conspiracy, she asserts, is a list of individuals and groups that is four pages long, and that includes the Judiciary of the State of New Jersey and many of the individual judges within it, several individual lawyers and law firms, the New Jersey Attorney General, and the Certified Shorthand Reporters Association of New Jersey ("CSRA/NJ"). In June 2003 she filed suit against all of them, bringing a panopoly of state tort law claims and claims arising under several federal statutes including the Racketeer Influenced Corrupt Organizations Act ('RICO").

Two of the named defendants moved to dismiss Ms. Yuhasz's Amended Complaint in, respectively, late November and early December 2003. Those motions were originally returnable on December 22, 2003. On December 11, 2003, Ms. Yuhasz requested that I stay the case and enter a RICO Case Order. By faxed letter dated December 17, 2003, I denied her request for a stay because I would not be requiring a RICO Case Statement, but adjourned the return date until January 26, 2004 so that she might have more time to fashion her opposition to the 12(b)(6) motions. Ms. Yuhasz timely filed that opposition on January 12, 2004.

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response, Ms. Yuhasz faxed a letter to my chambers in which she announced that"[a]s a result of [my] cibdyct ub barrubg [her] from being heard in connection with "her Complaint (presumably a reference to my exercising my discretion to decide the motions to dismiss on the papers), she would "not be appearing in [my] court on Monday, February 23, 2004." As announced, Ms. Yuhasz did not in fact appear in the courtroom for oral argument on February 23.

By motion dated January 19, 2004, Ms. Yuhasz requested that I recuse myself from this case because of my relationship with two of the defendants (New Jersey Attorney General Peter Harvey, who is one of my former law clerks, and Mollie Giordano, who is my (Court Reporter), and because she alleges that my unwillingness to request a RICO Case Statement indicates that I am biased against her and have pre-judged the case. She cited 28 U.S.C. §§ 455(a)[2] and 144[3].

As an initial matter, it is questionable whether Ms. Yuhasz's recusal motion is timely. Section 144 provides that such a motion "shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard." This requirement, however, "no longer can be applied, since terms of court were abolished in 1963." 13A CHARLES

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[2] Section 455(a) states that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

[3] Section 144 provides that

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.
>
> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE §3551.

To determine the timeliness of a recusal motion now, courts look to the actual amount of time that has elapsed between when the movant learned of the alleged bias that is the basis of his motion and when he filed the motion. They also leek to other factors such as "whether the [movant] has participated in substantial pre-trial motions between the time he first learned of the asserted bias and the time he filed the s 144 request." Sniith v. Danyo, 585 F.2d 83, 86 (3d Cir. 1978).

Ms. Yuhasz knew about most of the facts that form the basis of her recusal motion at least a month before she filed that motion[4]. She did not seek my recusal then, however. Rather, she allowed several weeks to pass without contacting chambers, and on January 12, 2004 submitted more than 200 pages of opposition to the notions to dismiss that were returnable on January 26, 2004, giving every impression that she intended to proceed with the case under my management. This submission constituted "participation in a substantial pre-trial motion.[5]" All of this at least arguably

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[4] Ms. Yuhasz asserts that she waited until January 19 to move for recusal because "the facts in support [of the motion] were not readily available to" her earlier. Certification ¶ 53. It is certain, however, that Ms. Yuhasz knew that Attorney General Harvey was one of my former law clerks at least as early as the week of December 15, 2003, as she angrily informed one of my current law clerks of her knowledge of this fact by telephone during that week. She also knew that I had decided not to ask her to submit a RICO Case Statement that week, because, as noted, I faxed a letter informing her of my decision on December 17, 2003.

[5] That Ms. Yuhasz's participation was in a defensive rather than affirmative posture is irrelevant. See Smith, 585 F. 2d at 86; Resolution Trust Corp. v. del re Castellett, Civ. A. No. 92-4635, 1993 WL 719763, at *2 (D.N.J. May 25, 1993)

renders Ms. Yuhasz's current request for disqualification untimely.

Even setting issues of timeliness aside, my recusal is not required here because no person could reasonably question my impartiality under these circumstances. Thus, though it is often appropriate for a judge to recuse himself or herself from a case when he or she has a personal relationship with one of the parties, recusal is not appropriate here.

Attorney General Harvey, who is named as a defendant in this lawsuit, is indeed one of my former law clerks and a former partner at the law firm where I was once partner. These facts alone, however, do not require my recusal.

I resigned from my former partnership, then known as Riker, Danzig, Scherer, Debevoise & Hyland, in 1979. Its name has changed several times since 1979 and will be referred to herein as "Riker, Danzig." Upon his graduation from Columbia Law School in 1982, Attorney General Harvey served a one year clerkship with me. Thereafter he was an associate with a major New York City law firm, served as an Assistant United States Attorney in Newark (where he appeared before me on several occasions), became an associate at Riker, Danzig, served as a Special Assistant to the New Jersey Attorney General, returned to Riker, Danzig where he became a partner, and then went back to the Attorney General's Office, becoming Attorney General in July 2003. Neither my relationship with Riker, Danzig, which terminated nearly twenty-five years ago, not Attorney General Harvey's 1982-1983 clerkship with me constitute grounds for concluding that my impartiality might reasonably be questioned in this case.

This is especially true as Attorney General Harvey is named in this case not in his individual capacity, but rather in

his official capacity[6]. See e.g. Morgan v. Clarke, 213 F.Supp.2d 1067, 1071 (E.D. Mo. 2002) (no recusal required where judge knew defendant President of the Board of Police Commissioners personally because defendant was only a nominal defendant"); Baugh v. City of Milwaukee, 829 F. Supp. 274, 276 (E.D. Wis. 1993) (no recusal required where judge's law clerk was wife of defendant President of the Milwaukee Common Council in part because defendant was named only in his official capacity).

Attorney General Harvey the individual had nothing to do with the incidents that gave rise to this lawsuit, either as a private citizen or as Attorney General (in fact, he had not even begun his term as Attorney General when those incidents occurred)[7]. He is named as a defendant only because of the office he holds. Needless to say, all New Jersey district court judges have many cases in which a party (e.g., a State agency or department or the State of New Jersey itself) is represented nominally by the New Jersey Attorney General. It would be absurd for me to recuse myself from every such case that comes before me. I thus deny Ms. Yuhasz's motion for my disqualification on the basis of my relationship with Peter Harvey.

Ms. Yuhasz also argues that my recusal is necessary because Mollie Giordano, my Court Reporter, was until 1997 a member of the CSRA/NJ, which is named as a defendant in

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[6] The Amended Complaint's caption does not include the words "in his official capacity." That Attorney General Harvey is named in his official capacity, however, is abundantly clear from paragraph 9 of the Amended Complaint, which indicates that Attorney General Harvey will be referred to throughout the remainder of the pleading as "Attorney General's Office."

[7] Attorney General Harvey was sworn in as Attorney General on July 10, 2003. The last incident mentioned in the Amended Complaint's recitation of facts occurred on April 25, 2003.

this lawsuit, along with all of "its agents, employees members and representatives[8]." I deny the recusal motion on this basis as well,

Ms. Yuhasz voluntarily dismissed her claims against many of the Defendants, including the CSRA/NJ, on February 11, 2004. Thus, had a conflict of interest existed prior to this dismissal, it would no longer exist now that the dismissal has been filed.

For the record, however, it is evident that no such conflict ever existed. Ms. Yuhasz alleges that the conflict existed not only because Ms. Giordano might technically have been a defendant, but also because Ms. Giordano "will be called as a witness to testify to the allegations" of Ms. Yuhasz's Amended Complaint.

The likelihood that Ms. Giordano would have been useful as a witness in a proceeding deciding the claim against the CSRA/NJ if it went to trial was slim to none. She was merely a member - not an officer - of an organization; according to Ms. Yuhasz's recitation of the facts, she was not personally involved in any of the incidents out of which this lawsuit arose, Those who were personally involved in those incidents would have been called - if anyone had been - to testify at trial[9].

Moreover, the CSRA/NJ is a large organization to which most court reporters in New Jersey belong. If my disqualification would have been appropriate because my Court Reporter was a member of the CSRA/NJ, it is difficult

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[8] Ms. Yuhasz alleges that Ms. Giordano is still a member of the CSRA/NJ, but, according to Ms. Giordano, this is not true.

[9] Even if Ms. Giordano had been called as a witness, another court reporter could have been retained to take the testimony.

to imagine that any federal judge in this district would not have been disqualifiable for the same reason. The case, however, would have to have been assigned to *someone.* For these reasons, I would have denied Ms. Yuhasz's recusal motion on the basis of my relationship with Ms Giordano even if Ms. Yuhasz had not voluntarily dismissed her claims against the CSRA/NJ.

Finally, Ms. Yuhasz argues that I committed "a glaringly definitive act of bias and/or prejudice against [her] and in favor of all defendants," Certification ¶ 38, when on December 17, 2003 I told her in a letter that I would "not be requesting or receiving a RICO case statement" despite her request to file one. My decision not to request a RICO Case Statement was based on my determination that the pleading Ms. Yuhasz had submitted was sufficient to state her claim. It was not in any way a manifestation of "bias and/or prejudice."

A RICO Case Statement is a case management tool that a judge may in his or her discretion order; it is not a plaintiff's *right* to file such a statement. See Local Rule 16.1(b)(4) ("In a civil action arising under 18 U.S.C. §§1961-1968, the Judge or Magistrate Judge *may* require a RICO case statement to be filed and served") (emphasis added); Northland Insurance Company v. Shell. Oil Company, 930 F. Supp. 1069, *1073-75* (D,N.J. 1996) ("Significantly, the order of a RICO Case Statement under [Local Rule 16.1) is discretionary, not mandatory...the statement is not required in every case. Rather, a judicial officer may order the statement's entry in appropriate cases.").

After reviewing Ms. Yuhasz's Amended Complaint and the many appendices affixed to it (which totalled more than 250 pages), I made the determination that she had adequately described the circumstances of the RICO violation she alleged, i.e., that she had pled with sufficient

specificity as to make a RICO Case Statement unnecessary[10]. A "party's displeasure with legal rulings does not form an adequate basis for recusal. Securacomm Consulting. Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000). See also Jones v. Pittsburgh Nat. Corp, 899 F.2d 1350, 1356 (3d Cir, 1990) ("Disagreement with a judge's determinations certainly cannot be equated with the showing required to...reflect on his impartiality as to dictate recusal.").

For all of these reasons, I deny Ms. Yuhasz's motion for my disqualification.[11]

DATED: 24th of February, 2004

s/Dickinson R. Debevoise

Dickinson R. Debevoise,
U.S.S.D.J.

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[10] Ms. Yuhasz herself notes that "[t]he factual bases supporting" her cause of action have "been citied with specificity and particularity in Exhibits 2, 4 and 5 attached and filed with the Original and Amended Complaint." Certification ¶ 40.

[11] In her February 20, 2004 letter, Ms. Yuhasz requested that I make any Order I entered denying her recusal motion "final" so that whe could file an immediate appeal. I deny this request.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOANNE N YUHASZ, CSR, RPL,

Plaintiff,

v.

CHIEF JUSTICE DEBORAH T PORTTZ, individually, and in her official administrative capacity as Chief Justice of the Supreme Court of the State of New Jersey and of the Judiciary of the State of New Jersey, Administrative Office of the Courts and in her former official and administrative capacity as Attorney General of the State of New Jersey and as agent and employceof the Office of the Attorney General of the State of New Jersey, CHRISTOPNERJ CAREY, ESQ., individually, and as agent, employee, associate and partner of Tonikins, McGuire & Wachenfeld; as agent, employee, associate and partner of Wilson, Elser, Moskowitz, Edelman

Civil Action
No. 03-02750

OPINION

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UNITED STATES
DISTRICT COURT

and Dicker, LLP and as agent, employee, associate and partner of Graham, Curtin & Sheridan, ANDREW N KESSLER, ESQ, individually, and as agent, employee, associate and partner of Hoagland, Longo, Moran, Vunst & Doukas, HOAGLAND LONGO, MORAN, DUNST & DOUKAS and its agents, associates, partners .and/or shareholders 1-100, ET AL.

Joanne N. Yulasz
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Pro Se Defendant and Attorney for Defendants Hoagland, Longo, Moran, Dunst & Doukas, LLP

DEBEVOISE. Senior District Judge

Before the court are two motions to dismiss the latest in a prodigious line of complaints filed by Joanne N. Yuhasz ("Ms. Yuhasz" or "Plaintiff') in state and federal courts in

New Jersey.[1] Ms. Yuhasz claims that she was originally wronged in the late 1980's by several of her supervisors in the New Jersey state court system in which she worked as a court reporter. A large number of the people who have been drawn into Ms. Yuhasz's net since these originating alleged wrongs took place (including the attorney who represented her in contesting those wrongs and - in turn - *his* attorney) have themselves been named as defendants in subsequent complaints she has filed.

The list of defendants named in Ms. Yuhasz's latest Complaint is four pages long and includes the collective "Judiciary of the State of New Jersey" and several individually named judges, a list of law firms and individual lawyers, and the Certified Shorthand Reporters Association of New Jersey ("CSRA/NJ").[2] The court now considers motions filed by three of these defendants - Christopher J. Carey, Esq. ("Mr. Carey"), Andrew N. Kessler, Esq. ("Mr. Kessler"), and Hoagland, Longo, Moran, Dunst & Doukas ("Hoagland' (collectively, "Defendants") - requesting that the court dismiss[3] the five claims Ms. Yuhasz has brought against them.[4]

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[1] Ms. Yuhasz had moved for my recusal from this case pursuant to 28 U.S.C. §§ 455(a) and 144. In an earlier Opinion, I denied that motion on the ground that no person could reasonably question my impartiality under the circumstances.

[2] After the instant motions were filed, Ms. Yuhasz voluntarily dismissed her Complaint against many of these Defendants, including the CSRA/NJ.

[3] Mr. Kessler has styled his motion a "cross-motion to dismiss," but it is in fact just a motion to dismiss like Mr. Carey's.

[4] The court bases its decision on Defendants' moving papers, Ms. Yuhasz's opposition to those papers, and Defendant' Reply Brief. Ms. Yuhasz submitted what she called a "Surrebuttal Brief" four days before the date originally scheduled for oral argument on this motion.

The court will grant Defendants' motions to dismiss. The New Jersey Superior Court, Law Division, Essex County has already adjudicated claims arising from the same underlying fads from which the instant five claims arose, and Ms. Yuhasz could have litigated those five claims during that previous state court proceeding. As a result, this court is precluded from adjudicating the five claims Ms. Yulasz brings here. Even if, as Ms. Yuhasz argues, the court were not precluded on *res judictzta* grounds from adjudicating one of the instant five claims (a RICO claim), Ms. Yuhasz could not go forward because that claim would fail on the merits.

Presently before the court also are Ms Yuhasz's motions requesting (1) leave to file a RICO Case Statement, (2) leave to file a Second Amended Complaint, and (3) that the court wait to resolve Defendants' motions to dismiss until the RICO Case Statement and Second Amended Complaint have been filed The court will deny all of these motions for the reasons stated below

FACTUAL BACKGROUND

The following facts are taken from Ms Yuhasz's Amended Complaint ("Complaint") and several of the related Complaints she has filed previously in other *courts,* which she incorporates by reference into the current Complaint.[5] The court will refer to one of those previous Complaints, which Ms Yuhasz filed in the Superior Court of New Jersey, Law Division, Morris County on April 1, 1999, by its docket number, "MRS-L-845-99"

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[5] See U.S. Express Lines Ltd. v. Higgins, 281 F. 3d 383, 388 (3rd Cir. 2002) (in considering a motion to dismiss, the court must accept all the allegations made in the Complaint as true).

Ms Yuhasz was a certified court reporter in the New Jersey state court system After years of service to the courts, she claims that several of her supervisors began to abuse her emotionally, and that, in an attempt to cause her to be transferred to another vicinage, two of them issued phony negative performance evaluations about her

In December 1991, attorney Stephen S Weinstein ("Mr Weinstein") filed a grievance with the Administrative Office of the Courts ("AOC"") on Ms Yuhasz's behalf requesting "an appropriate modification of [the] false evaluations...in addition to alleging discrimination in a hostile work environment." Ms. Yuhasz was not afforded a hearing on this grievance, no disciplinary action was taken against her supervisors as a result of the grievance, and Plaintiff eventually hired a new attorney, Bruce D. Leder ("Mr. Leder").

Over the next few years Ms. Yuhasz filed several more grievances in which she repeated her earlier complaints and also accused Morris County Assignment Judge Reginald Stanton ("Judge Stanton") of, *inter alia,* misappropriating Morris County funds. In. January 1995, Judge Stanton ordered the AOC to transfer Plaintiff, allegedly in retaliation for her filing the grievances. Several months later, Plaintiff claimed that her own attorney (Mr. Leder), in cooperation with the CSRA/NJ and others, surreptitiously altered the Collective Bargaining Agreement ("CBA") that governed the terms of her employment to make the transfer Judge Stanton ordered licit under it.[6]

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[6] Later courts in the context of other cases Ms. Uyhasz has initiated have expressed doubt (without making explicit findings) that this CBA alteration actually occurred. For example, Ms. Yuhasz brought suit in New Jersey court claiming that she was transferred in retaliation for filing grievances in violation of the New Jersey Law Against Discrimination. To rebut the defendants' proffered non-discriminatory explanation for the transfer and show that that explanation was pretexual,

The next month, Plaintiff retained attorney Joel S. Selikoff ("Mr. Selikoff") to contest the transfer. Plaintiff claims that, like Mr. Leder before him, Mr. Selikoff betrayed her) "collud[ing] and cooperat[ing] with Leder in perpetuating a contractual fraud upon Plaintiff" by failing to assert fraudulent alteration of the CBA in the Order to Show Cause that he submitted on Plaintiff's behalf, and then "stalling" in litigating Plaintiff's claim,

In or around May 1996, Ms. Yuhasz filed *(pro so)* a suit for legal malpractice ("Suit #1") in New Jersey Superior Court, Morris County, against a number of defendants including Mr. Weinstein (for, *inter alia,* "deliberately and intentionally" failing to prosecute her AOC grievance), Mr. Leder and Mr. Selikoff (for colluding in the CBA alteration).

Ms. Yuhasz raised the CBA alteration incident. The appellate Division found that Ms. Yuhasz had offered insufficient proof of this allegation to rebut the defendants' proffered reason or expose it as pretextual. It noted

> Plaintiff states that defendants fraudulently altered the collective bargaining agreement in order to insert a clause permitting transfers between vicinages. Yuhasz, however, fails to supply any proof in support of what appears on its face to be an incredible argument. The only "proof" is in the plaintiff's allegation that "[t]he involuntary transfer of Plaintiff was implemented when Article VII of the 1992-1995 Collective Bargaining Agreement was specifically and fraudulently altered in May 1995 to permit and protect the AOC in their continual efforts to transfer Plaintiff between the years 1989 and 1995." She also alleged that she "learned that the contract clause allowing transfer was inserted after the signing of the contract and was not valid." Her own witness Walter Perelli, however, while certifying that "Plaintiff...was never informed of this particular [transfer clause]" revealed that he was aware that "it was ratified in October, 1994."

Joanne N. Yuhasz v. Judiciary of the State of New Jersey, et al., No. A-2591-00t1, slip op. at 18-19 (N.J. Sup. Ct. App. Div. March 13, 2002).

In this lawsuit, Mr. Carey represented Mr. Weinstein and Mr. Kessler of Hoagland represented Mr. Selikoff's firm. The lawsuit was transferred to the Superior Court in Essex County.

During the course of Suit #1, Plaintiff alleges that Mr. Kessler engaged in improper conduct such as filing harassing motions against her with the intent to create vexatious and expensive litigation, and refusing to produce documents she had requested and provide her with answers responsive to her interrogatories. Plaintiff claims that Mr. Carey also engaged in such discovery abuses, and additionally that be altered a copy of the grievance form she had submitted to the AOC. As a result of this alleged misconduct, Plaintiff filed suit ("Suit #2") in the Superior Court of New Jersey, Law Division, Morris County, in which she accused Mr. Carey, Mr. Kessler and others of "abuse of process, obstruction of justice and judicial misconduct" She claims that Mr. Carey and Mr. Kessler conducted themselves as they did in order to assist many of the other people named as defendants in the instant suit in preventing the CBA alteration from coming to light. This lawsuit, like the one that spawned it, was also ultimately transferred to the Essex County Superior Court.

Several defendants named in the Suit #2 - including Mr. Carey, Mr. Kessler and Hoagland - moved in the Essex County Superior Court to dismiss Plaintiff's claims against them. On June 11, 1999, Judge Theodore A. Winard ruled from the bench on these motions.

Judge Winard *granted* the motion of Mr. Kessler and Hoagland to dismiss the claims on the grounds that (1) there was no evidence of an unlawful motive behind Mr. Kessler's discovery-related action and inaction,[7] and that (2) even

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[7] In so holding, Judge Winard appears to have made factual findings in relation to the case despite the fact that it was before him on a motion to dismiss.

taking Ms. Yuhasz's allegation that Mr. Kessler had an unlawful motive as true, the proper avenue for redress would not have been to bring a tort action against him; rather, the exclusive remedy would have been to move for sanctions under 1:4-8(b) of the New Jersey Court Rules.[8] Judge Winard *denied* Mr. Carey's motion to dismiss the claim that Mr. Carey filed an altered grievance form during his representation of Mr. Weinstein, however, He held that, viewing Ms. Yuhasz's claim "indulgently," "there very well may be a cognizable tort of misrepresentation."

Carey moved for reconsideration of this denial, and on October 8, 1999, after oral argument, Judge Winard again ruled from the bench. He granted the motion for reconsideration and dismissed Ms. Yuhasz's claim against Mr. Carey.[9]

Plaintiff filed the instant Complaint in June 2003. The Complaint contains fifteen counts, of which only the

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[8] See transcript of June 11, 1999 hearing, attached to Plaintiff's Opposition Brief as Exhibit 4 at 12-13 and Order of June 11, 1999, attached to Plaintiff's Opposition Brief as Exhibit 5.

[9] See transcript of June 11, 1999 hearing, attached to Plaintiff's Opposition Brief as Exhibit 6 and Order of October 8, 1999, attached to the Certification of Patricia A. Brennan, Esq. as Exhibit A. The bases for this oral ruling are somewhat elusive. Judge Winard clearly relied on the New Jersey Supreme Court's decision in Baxt v. Lilola, 714 A.2d 271 (N.J. 1998), in reaching the conclusion he did, but from the transcript of the bench ruling, it is unclear which of that case's holdings was relevant- the holding that violation of the rules of professional conduct cannot be used to provide a basis for civil liability against an adversary's attorney, or the holding that to prevail on a claim for tortuous concealment of evidence, a plaintiff must prove that there was a legal obligation on defendant's part to disclose; the information was material to plaintiff's case; plaintiff could not have "readily" obtained the information without disclosure by the defendant; there was intentional nondisclosure; and plaintiff "was harmed by relying on the nondisclosure."

following are aimed at Mr. Carey, Mr. Kessler and Hoagland: (1) violation of Plaintiffs First, Fifth, Seventh and Fourteenth Amendment rights, (2) obstruction of justice, conspiracy- and concerted action to facilitate and conceal monetary thefts, (3) violation of state and federal RICO, (4) intentional and negligent infliction of emotional distress and *(5)* tortious interference with prospective economic advantage. The Complaint's "Factual Allegations" section is quite lengthy, but does not include any facts relating to Mr. Carey, Mr. Kessler or Hoagland. The relevant facts about these defendants are asserted in this case only by incorporation of MRS-L-845-99, the 74-page Complaint that Plaintiff filed to initiate Suit #2 in the New Jersey Superior Court. See e.g., Complaint ¶ 178. In other words, Ms. Yuhasz apparently claims that Defendants' conduct during Suit #1 - which was contested in Suit #2 alone constituted a violation of the five claims she brings here.

DISCUSSION

A. Plaintiff's motion for leave to file a RICO Case Statement and a Second Amended Complaints and to postpone the entry ofjudginent on Defendants' motions to.dirniss until these have been filed

Ms. Yuhasz has requested that the court grant her leave to file a RICO Case Statement and a Second Amended Complaint that would clarify her allegations, and postpone resolution of Defendants' motions to dismiss until she has done so. "This Court must, as a matter of law, stay all dispositive motions and enter an order permitting Plaintiff to file a RICO Case Statement and permitting Plaintiff to file a motion seeking leave to file a Second Amended Complaint to amplify and clarify the allegations of her Amended Complaint," she demands. Opposition Brief at 10.

The court will reject Ms. Yuhasz's demands. Contrary to Ms. Yuhasz's depiction, it may do so because "the order of a RICO Case Statement under [Local Rule 16.1] is discretionary, not mandatory," Northland Insurance Company v. Shell Oil Company, 930 F. Supp. 1069, 1073 (D.N.J.. 1996), and the decision whether to grant a motion to amend a Complaint is within "the sound discretion of the district court,' Cureton v. National Collegiate Athletic Ass'n, 252 F.3d 267, 272 (3d Cir. 2001). The court will not exercise its discretion in the *way* Ms. Yuhasz requests first because it has already denied Ms. Yuhasz's request to file a RICO Case Statement under circumstances described in its Opinion denying her recusal motion. The rationale that led to that denial supports this denial as well, Further, the court will deny Ms. Yuhasz's motion to amend her Complaint because, among other reasons, Ms. Yuhasz has not attached to her motion a copy of the proposed amended complaint. Local Rule 7. 1(e)(2) and Lake v. Arnold, 232 F.3d 360, 374 (3d Cir. 2000) (when moving to file an amended complaint, movant shall attach to the motion a copy of the proposed pleading). Having denied Ms. Yuhasz's motions, the court will address Defendants' motions to dismiss.

B. Defendants' motions to dismiss

Though the claims Plaintiff has brought here are not identical to the claims she brought against Mr. Carey, Mr. Kessler and Hoagland in Suit #2 in the Superior Court, they all arise from the same underlying facts as those claims did. Nothing prevented Plaintiff from bringing the current claims in the context of the previous state court lawsuit. As a result, New Jersey's Entire Controversy Doctrine prevents the court from resolving the claims currently before it.

Under 28 U.S.C. § 1738, a federal court must give a state court judgment the same preclusive effect that it would be given by courts of the state where the judgment was

rendered. Mign v. Warren City School District Board of Education, 465 U.S. 75, 81(1984); Bernardsville Quarry v. Borough of Bernardsville, 929 F.2d 927, 929-30 (3d Cir. 1991). Whether the state court judgment has preclusive effect in the federal court is thus a matter of the state law McNasby v Crown Cork and Seal Co Inc , 88S F 2d 270,271 (3d Cir 1989)

In New Jersey, pursuant to the Entire Controversy Doctrine, a party is required to bring in one proceeding all possible claims that emerge from a particular transaction Oliver v Ambrose, 152 N J 383, 392 (1998), Bernardsville Quarry, 929 F 2d at 930.[10] If she does not bring a claim she could have brought in the first proceeding, she may not raise it in a subsequent proceeding McNeil v Legislative Apportionment Commission of the State of New Jersey, 828 A 2d 840, 852-59 (NJ 2003)

The claims Plaintiff brings here arise from the same transaction from which her claims in the Superior Court arose This is made crystal clear by the fact that in her .Amended.Complaint to this court, Ms. Yühasz• does .not even mention any facts about Mr. Carey, Mr. Kessler and Hoagiand, but rather merely incorporates by reference the recitation of facts from MRS-L-845-99

Further, Ms Yuhasz *could* have asserted in the Superior Court the claims she raises here but did not raise there, namely, her § 1983 claims for violation of her Constitutional rights, her RICO claim, and her claims for

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[10] The Entire Controversy Doctrine is codified in Rule 4:30A of the New Jersey Rules of Court. That rule provides that the "[n]on-joinder of claims or parties required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine, except as otherwise provided by...R. 4:67-4(a)(leave required for counterclaims or cross claims in summary action).

intentional and negligent infliction of emotional distress and tortious interference of prospective economic advantage. State courts have concurrent jurisdiction over § 1983 and RICO claims, Felderv. Casey, 487 U.s. 131, 139 (1988) (§ 1923); Tafflin v Levitt, 493 U S *455* (1990) (RICO), and obviously have jurisdiction to decide state common law claims The Superior Court is the state court of original general jurisdiction N.J. CONST., ART VI§ 3, ¶2. It thus was the appropriate state forum for the claims Ms Yuhasz brings here.[11]

Because the current claims arise from the same transaction as did the claims adjudicated in the state court proceeding, and because Ms Yuhasz could have brought the current claims in that proceeding, this court is precluded from resolving the claims at this time.

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[11] The doctrine of *res judicata* is closely linked to the Entire Controversy Doctrine. McNeil, 828 A.2d at 858-59 ("The claim preclusion aspect of the entire controversy doctrine is essentially *res judicata* by another name").

Under New Jersey as well as federal *res judicata* law, a plaintiff is precluded from bringing a claim that was adjudicated in an earlier action so long as (1) the judgment in the prior action was valid, final, and on the merits, (2) the parties in the later action are identical to or in privity with those in the prior action, and (3) the claim in the later action grew out of the same transaction or occurrence as the claim in the earlier one. Id. at 859.

All of these conditions are fulfilled here. The Order is valid. It is also final (in his ruling on October 14, 1999, Judge Winard stated affirmatively that "the court is of the view that its orders with respect to the matter are now dispositive [and] final"). Finally, the Order is on the merits explicitly states that the case was dismissed pursuant to Rule 4:6-2(e)(failure to state a claim on which relief can be granted), and a dismissal under that rule operates as an adjudication on the merits for *res judicata* purposes. Velasquez v. Franz, 589 A.2d 143, 148 (N.J. 1991). The parties in this action are identical to the parties in Suit #2 and, as discussed above, the current claim grows out of the same transaction as did the one that initiated Suit #2.

Ms Yuhasz argues that she *could not* have brought in Suit #2 the RICO claim she currently brings against Defendants because that claim did not accrue until she was "constructively discharged," which occurred *after* Judge Winard dismissed Suit #2.[12] ' By this she presumably means she was not "injured in her property or business" - a prerequisite for bringing a suit for civil damages under 18 U.S.C. § 1964(c) - until she lost her job. Even if it is true that Ms. Yuhasz's RICO claim did not accrue until her employment as a court reporter ended, and that the RICO claim is consequently not barred on *res judicata* grounds, however, the RICO claim still may not go forward because it fails to state a claim for which relief can be granted.

Ms. Yuhasz's RICO theory is as follows: all of the defendants she has named knew that the CBA had been altered to justify Judge Stanton's transfer of her to another vicinage. In various ways, each of them acted to enable and conceal this alteration and in so doing violated RICO (presumably 18 U.S.C. § 1962(c)). Mr. Carey, Mr. Kessler and Hoagland participated in this conspiracy that violated RICO through their alleged discovery abuses during Suit #2.

Under 18 U.S.C. § 1962(c), it is "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." "A violation of § 1962(c) [thus]...requires (1) conduct, (2) of an enterprise (3) through a pattern (4) of racketeering activity." Sedima v. Imrex Company, 473 U.S. 419, 495 (1985), 18 U.S.C. § 1961 defines "racketeering activity" as

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[12] It is unclear what Ms. Yuhasz means by the phrase "constructively discharged," given that she claims in her Complaint that she was "terminated"(¶ 87).

any act which is indictable under an exhaustive list of federal crimes, or "any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical...which is chargeable under State law and punishable by imprisonment for mote than one year." Rose v. Bartle, 871 F.2d 331, 358 (3d Cir. 1989).

None of the conduct of which Ms. Yuhasz accuses Mr. Carey and Mr. Kessler constitutes "racketeering activity." Even if they had engaged in the discovery abuses she alleges with unlawful motive, the worst they could have earned would have been sanctions under Rule 1:4-8(b) - certainly not imprisonment for at least a year.[13] As such, even if her RICO claim is not barred by the doctrine of *res judicara,* it fails on the merits.[14]

Ms. Yuhasz also argues that, though Defendants explicitly plead the defense of *res judicata,* they are "in reality...relying on the defense of the Doctrine of Election of Remedies," a doctrine that is not properly invoked here. There is no indication whatsoever, however, that the doctrine of election of remedies plays or was meant to play any part in Defendants' argument in support of their motions to dismiss. That doctrine holds that "when a party having full knowledge

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[13] Judge Winard, of course, made the factual finding that Mr. Carey and Mr. Kessler did not have unlawful motive, and that the action in shich they engaged did "not rise...to the level of abusive process...nor [did they] rise to the level of any other cognizable tort which can be maintained against these defendants for the recovery of damage." That they did not rise to the level of any tort would be a strong indication that they are likely not chargeable under state law as a crime if the court could rely on Judge Winard's finding. As he made the factual finding improperly in the context of a motion to dismiss for failure to state a clam, however, the court will not so rely.

[14] The state RICO claim under N.J. STAT. ANN. 2C:41-2(c) – which Ms. Yuhasz also brings against Defendants – would similarly fail.

of all relevant facts brings an action on one of several inconsistent claims for relief, that party may be considered to have made a binding election, preventing recourse to the other claims by amendment or by seperate action" 18-131 MOORE'S FEDERAL PRACTICE Civil §131 13 [5][B] (Matthew Bender 3d ed). It s Judge Winard's resolution of Ms. Yuhasz's claims that Defendants successfully argue precludes this• court from considering her current claims - not Ms Yuhasz's previous election of one kind of claim that is inconsistent with her current claims

For the foregoing reasons, Ms Yuhasz's Complaint against the moving Defendants is dismissed with prejudice.

s/Dickinson R. Debevoise
Dickinson R. Debevoise, U.S.S.D.J.

Dated: February 27. 2004

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ, CSR, RPR.,

Civil Action
No. 03-02750

Plaintiff,

-v-

OPINION

CHIEF JUSTICE DEBORAH T. PORITZ, *et al.*

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UNITED STATES
DISTRICT COURT

Ms. Joanne N. Yuhasz
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DEBEVOISE, Senior District Judge

The New Jersey Administrative Office of the Courts ("AOC") and twenty judges of the New Jersey state courts have moved to dismiss federal and state claims Plaintiff Joanne N. Yuhasz ("Ms. Yuhasz") brought against them. The court finds that (1) some of Ms. Yuhasz's federal claims fail under FED.R. Civ. P. 12 (b) (6), (2) many of the moving defendants are immune from suit on other of Ms. Yuhasz's federal claims, and (3) the court does not have authority to exercise subject matter jurisdiction over Ms. Yuhasz's remaining federal claims. Consequently, the court will grant the motion to dismiss all of Ms. Yuhasz's federal claims as to all of the moving defendants. The court will further exercise its discretion to decline to accept supplemental jurisdiction over Ms. Yuhasz's pendent state claims.

I. Related State Court Cases

Ms. Yuhasz alleged that she was the victim of several discriminatory employment actions during her tenure as a Certified Shorthand Reporter in the New Jersey state court system. Beginning apparently in 1995, she filed several successive lawsuits in the New Jersey courts contesting the allegedly discriminatory employment actions, alleged attempts to cover these actions up, and various incidents that took place in the course of state court proceedings in which she contested these actions.[1] Many of the people Ms. Yuhasz met along the way (including her lawyers, her lawyers'

[1] Ms. Yuhasz has made reference to many of these state court lawsuits in her submissions to this court. It appears that some of those suits have been resolved and some are still active. The court cannot be certain, however, because neither Ms. Yuhasz nor the Attorney General's Office have submitted to it a comprehensive list of all of the lawsuits and their current statues.

lawyers, and judges who decided motions against her) subsequently became defendants in lawsuits she later filed.

II. Composition of the Amended Complaint

Not satisfied with the results she received in state court, Ms. Yuhasz filed a Complaint in this court in April 2003 asserting similar claims against many of the same defendants she had sued in state court. At her request, the court signed a Consent Order dismissing that Complaint without prejudice several months later.[2]

Ms. Yuhasz filed yet another related complaint in this court in June 2003, In October 2003, she filed an "Amended Complaint." Ms. Yuhasz attached to the Amended Complaint, *inter alia* three of the complaints she had filed previously in state court (MER-L-1623-00, ESX-L-3281-00, and MRSL-845-99), and asserted that she was thereby "incorporating" these complaints' factual recitations into the Amended Complaint. Taken together with the documents attached to and "incorporated" into it, the Amended Complaint exceeds 240 pages.

Claims brought in the Amended Complaint against some of the defendants named there rely entirely on facts recited in one or more of the attached state court complaints.[3]

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[2] Ms. Yuhasz claims in her Opposition Brief that the claims she asserted in the April 2003 Complaint that the court dismissed pursuant to the Consent Order "are currently pending." They are not; ther were dismissed. The only claims filed by Ms. Yuhasz that are currently pending before the court ar those asserted in the Amended Complaint she filed in October 2003.

[3] See this court's previous Opinion in Yuhasz v. Chief Justice Deborah T. Poritz, et al., No. 03-2750, slip op. (D.N.J. February 27, 2004)("The [Amended] Complaint's 'Factual Allegations' section is quite length, but does not include any facts relating to [the moving defendants']. The relevant facts about these defendants are asserted in this

On the other hand, certain incidents on which claims in the Amended Complaint rely are recounted in several of the complaints — often in inconsistent or even contradictory ways. The result makes for a dizzying read.

It would be an understatement indeed to observe that Ms. Yuhasz's Amended Complaint makes a mockery of the requirements of Rule 8.[4] The court is well aware that, rather than read a long and complex complaint or read several complaints together, other courts have dismissed for excessive prolixity.[5] Because dismissing Ms. Yuhasz's Amended Complaint for non-compliance with Rule 8 would only lead to a new filing[6] and thus add to the time and resources already expended in resolving this matter, however, the court has decided. to plunge in and assess Ms. Yuhasz's claims here and now.

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case only by incorporation of MRS-L-845-99, the 74-page Complaint that Plaintiff filed...in the New Jersey Superior Court.")

[4] Rule 8 requires that a pleading contain "a short and plain statement of the claim" and that "[e]ach averment of a pleading...be simple, concise and direct." FED.R.Civ.P.8(a) and (e).

[5] See, e.g. Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 961 F.2d 1148, 1157 (5th cir. 1992)("We decline [plaintiff's] invitation to read all of this complaints together. This tangled web of litigation is of his own making. Thus, we do not agree the 'substantial justice' requires us to hold, as he suggests, that 'if a cause of action is properly plead in any action or in any combination of actions it is properly plead in any action or in any combination of actions it is properly peaded.'"). See also U.S. v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991)("[j]udges are not like pigs," who should be made to "hunt...for truffles buried in briefs").

[6] Ms. Yuhasz has, in fact, requested that the court grant her leave to file a RICO Case Statement and a Second Amended Complaint that would clarify her allegations, and postpone resolution of Defendants' motions to dismiss until she has done so. The court already denied this request in its Opinion granting a motion to dismiss brought by other defendants named in the Amended Complaint. See Yuhasz v. Chief Justice Deborah T. Poritz, et al., No. 03-02750, slip op. (D.N.J. February 27, 2004). It will not revisit the issue here.

III. Defendants Named and Allegations Made in the Amended Complaint

In the Amended Complaint, Ms. Yuhasz names as defendants a four-page list of people and institutions including the "Judiciary of the State of New Jersey" and several individual judges, a list of law firms and several individual lawyers, and the Certified Shorthand Reporters Association of New Jersey ("CSRA/NJ")[7]. She alleges the existence of a vast conspiracy in which all the defendants participated in various ways - during the period of Ms. Yuhasz's employment: at the court and after - to silence her, inflict emotional distress on her, cover up their own and others' wrongdoing, and prevent her from seeking justice through the court system.

Ms. Yuhasz brings against the named defendants claims for violation of various of her constitutional rights under 42 U.S.C. §§5 1983 ("§ 1983") and 1985; the federal Racketeer Influenced and Corrupt Organizations Act ("federal RICO"), 18 U.S.C. § 1961 *et seq.;* the New Jersey Racketeering Act ("New Jersey RICO"), N.J. STAT. ANN. § 2C:41-1, *et seq.*, the New Jersey Conscientious Employee Protection Act ("CEPA"), NJ. STAT. ANN. § 34:19-2; and the New Jersey Law Against Discrimination ("NJLAD"), NJ. STAT. ANN, § 10;5-1, *et seq.;* in addition to copious common law claims. She brings most of these claims against *all* of the defendants, although often there appears to be no connection whatsoever between the asserted conduct of a defendant and many of the claims brought against him or her.

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[7] Ms. Yuhasz voluntarily dismissed her claims against some of the defendants named in the Amended Complaiant-including the CSRA/NJ-on February 11, 2004.

IV. Motions Decided Earlier by this Court

The court has already resolved several motions arising from this far-reaching Amended Complaint. First, I denied Ms. Yuhasz's motion requesting my recusal from this case on the ground that no person could reasonably question my impartiality under the circumstances, See Yuhasz v. Chief Justice Deborah T. Poritz, et al., No. 03-02150, slip op. (D.N.J. February 24, 2004).

Second, the court granted motions to dismiss that had been filed by three of the named defendants - Christopher J. Carey, Esq., Andrew N. Kessler, Esq., and Hoagland, Longo, Moran, Dunst & Doukas ("the Carey Defendants") - whom Ms. Yuhasz claimed had participated in the conspiracy she alleges by engaging in discovery abuses in the course of defending her former attorneys, whom she was suing for malpractice. See Yuhasz v. Chief Justice Deborah, T. Poritz. et al., No. 03-02150, slip op. (D.N.J. February 27, 2004). Because a state court had already adjudicated claims arising from that conduct, the court held that it was precluded under New Jersey's Entire Controversy Doctrine from adjudicating the claims Ms. Yuhasz brought against the Carey Defendants in her Amended Complaint. The court also found that at least one of the claims in Ms. Yuhasz's Amended Complaint (the federal RICO claim) failed under Rule 12 (b) (6) as against the Carey Defendants. Id.

V. The Instant Motion

Before the court presently is a motion to dismiss that was filed by twenty-one more of the defendants Ms. Yuhasz names in her Amended Complaint: the AOC and twenty judges ("Moving Defendants")[8]. The judges are the

[8] Ms. Yuhasz names as defendants both "the Judiciary of the State of New Jersey" and the AOC, but, as the New Jersey Attorney General's Office noted in its moving brief, these are one and the same.

Honorable Deborah T. Poritz, J. ("Chief Justice Poritzj; the Honorable Reginald Stanton, A.J.S.C. ("Judge Stanton; the Honorable James J. Ciancia, J.A.D. ("Judge Ciancia"); the Honorable Linda R. Feinberg, A.J.S.C. ("Judge Feinberg"); the Honorable Neil H, Shuster, J.S.C. ("Judge Shuster"); the Honorable Paulette Sapp-Peterson, J.S.C. the Honorable Joseph A, Falcone, A.J.S.C. ("Judge Falcone"); the Honorable Eugene J. Codey, Jr., J.S.C. ("Judge Codey"); the Honorable Philip M. Freedman, J.S.C. ("Judge Freedman"); the Honorable Donald S. Goldman, J.S.C. ("Judge Goldman"); the Honorable Edith K. Payne, J.S.C./J.A.D. ("Judge Payne"); the Honorable Theodore A. Winard, J.S.C. ("Judge Winard"); the Honorable Arthur Minuskin, J.S.C. ("Judge Minuskinj; the Honorable Michael P. King, J.A.D. ("Judge King"); the Honorable Ariel A. Rodriguez, J.A.D. ("Judge Rodriguez"); the Honorable Steven L. Lefelt, J,A.D. ("Judge Lefelt"); the Honorable Joseph F. Lisa, J.A.D. ("Judge Lisa"); the Honorable Ermine L. Conley, J.A.D. ("Judge Conley"); the Honorable Sylvia B. Pressler, P.J.A.D. ("Judge Pressler"); the Honorable James J. Petrella, J.A.D. ("Judge Petrella"). The Amended Complaint's caption indicates that Ms. Yuhasz intends to sue all of the defendant judges in both their individual and official capacities.

Ms. Yuhasz brings against all of the Moving Defendants § 1983 claims for violation of her First, Fifth, Seventh and Fourteenth Amendment rights; a claim for violation of the CEPA; and common law claims for obstruction of justice, conspiracy, concerted action to facilitate and conceal monetary thefts, vicarious liability, breach of the duty of fair representation and bad faith, intentional and negligent infliction of emotional distress, and tot-dons interference with prospective economic advantage. Additionally, Ms. Yuhasz charges Chief Justice Poritz with violation of federal RICO and New Jersey RICO, and Judges Rodriguez, Lefelt and Lisa with violation of § 1985, the NJLAD, and state defamation laws.

Ms. Yuhasz seeks compensatory-s treble and punitive damages, costs and fees. She also seeks what she refers to as "injunctive relief;" specifically, Ms. Yuhasz asks this court to "vacate" and declare "null and void" several orders entered by Judges Sapp-Peterson, Rodriguez, Lefelt, Lisa, Pressler and Petrella because, she claims, in issuing these orders, the judges violated her constitutional rights. Amended Complaint ¶ 246, 256 & 266.

The court finds that only a fraction of the facts Ms. Yuhasz alleges are necessary to the disposition of the Moving Defendants' motion. Accordingly, below, the court will recount only those facts, and will do so immediately before consideration of each of the legal claims stemming from them. In considering the Moving Defendants' motions to dismiss these claims, the court must accept all the allegations made in the Amended Complaint as true. U.S. Express Lines Ltd. v. Higgins, 281 F.3d 383, 388 (3d Cir. 2002).

VI. Claims against the Defendant Judges hi their Individual Capacities[9]

A. Judge Stanton

All of Ms. Yuhasz's § 1983 claims against former Morris County Assignment Judge Stanton in his individual capacity must fail because if all the facts in the Amended Complaint are true (as the court must assume they are), Ms. Yuhasz would have failed to state a claim for violations by Judge Stanton of her constitutional rights.

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[9] Although, as discussed in section VII of this Opinion, the defendant judges are under the Eleventh Amendment immune from suit in their official capacities, they are not immune from suit on Ms. Yuhasz's claims against them in their individual capacities. See e.g., Haferv. Melo, 502 U.S. 21 (1991).

Ms. Yuhasz alleges that Judge Stanton and other court employees including Terence Headd ("Headd") did not want her working in their courthouse. As a result, beginning in 1989, she alleges, they subjected her to a hostile work environment[10] in an attempt to pressure her to quit her job. If they could not make her quit, Ms. Yuhasz claims, they wanted to make her appear incompetent so that the AOC would transfer her "out of her seniority position in Morris County." ESX-L-3281-00 ¶ 27. In pursuit of this latter goal, Ms. Yuhasz claims, Headd and another of her supervisors issued phony negative performance evaluations about her.[11]

On or around October 1991, Ms. Yuhasz alleges, Judge Stanton "announced at an Assignment Judges' lunch that a reporter who didn't get along with Headd...was going to be transferred and that Headd was in the process of accomplishing that at this time." ESX-L3281-00 ¶ 47. The implication was that that reporter was Ms. Yuhasz.

Ms. Yuhasz claims that between 1991 and 1997- pursuant to the procedure outlined in the Collective Bargaining Agreement that governed the terms of her employment ("CBA") - she filed a series of grievances with the AOC in which she complained about the hostile work environment Judge Stanton and others had allegedly created. In these grievances, she claims, she also exposed "practices including, but not limited to, falsification of business records,

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[10] Amended Complaint ¶ 78; MER-L-1623-00 ¶ 23 & 32; ESX-L-3281-00 ¶ 27. At the same time as she alleges that Judge Stanton helped create a hostile work environment, Ms. Yuhasz appears to indicate that Judge Stanton was sympathetic to her complaints about other employees' hostility, see ESX-L-3281-00 ¶ 109("judge Stanton stated he agreed that Plaintiff did not have to tolerate that kind of behavior on the part of Headd"), and even attempted to broker peace among Ms. Yuhasz, Headd and the other court employees who Ms. Yuhasz claimed were harassing her. See, e.g., ESX-L-3281-00 ¶¶ 100 ("Judge Stanton...stated that he wanted to set up a meeting with Plaintiff and Headd").

[11] MER-L-1623-00 ¶ 18.

misappropriation of County monetary funds and unlawful discriminatory employment practices" that allegedly had occurred in the courthouse. Amended Complaint ¶ 80.[12]

In January 1995 Judge Stanton ordered Ms. Yuhasz transferred to another vicinage. Ms. Yuhasi alleges that be did so in retaliation for her exposure of illegal practices in her grievances, arid to protect himself and others from liability that might arise from this exposure).[13]

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[12] See also Complaint MER-L-1623-00 ¶ 29 ("Several of the grievances file [sic] by Plaintiff during this period of time documented the approval of the Defendants in permitting the falsification of court records among the staff of reporters who were beneath Plaintiff in seniority") and ¶ 73 ("As a result of grievances filed by Plaintiff, practices prohibited by State and Federal law were exposed").

As far as the court can make out from the Amended Complaint and the other complaints "incorporated" into it, Ms. Yuhasz filed these grievances on December 10, 1991 (MER-L-1623-00 ¶ 29), May 11, 1994 (certification attached to MER-L-1623-00 ¶ 1), October 19, 1994 (certification attached to MER-L-1623-00 ¶ 1), November 3, 1994 (certification attached to MER-L-1623-00 ¶ 1), November 10, 1994 (certification attached to MER-L-1623-00 ¶ 1), November 15, 1994 (certification attached to MER-L-1623-00 ¶ 1), January 4, 1994 (certification attached to MER-L-162300 ¶ 1). April 13, 1995 (certification attached to MER-L-1623-00 ¶ 1), June 7, 1995 (certification attached to L-1623-00 ¶ 1), April 7, 1997 (certification attached to MER-L-1623-00 ¶ 1), April 28, 1997 (certification attached to MER-L-1623-00 ¶ 1, and May 23, 1997 (certification attached to MER-L-1623-00 ¶ 1).

[13] Amended Complaint ¶¶ 78-81; ESX-L-3281-00 ¶¶ 59.

Ms. Yuhasz has already named Judge Stanton as a defendant in one of the lawsuits she initiated in state court seeking relief for, *inter alia*, the conduct described above. That suit, originally filed in Mercer County Superior Court and assigned the docket number MER-L-1623-00, was later transferred to Burlington County Superior Court, where it is currently pending. *Phone conversation with docket clerks in the Mercer and Burlington County courts, 29 March 2004.*

It is possible that Judge Stanton was a defendant in other of the many suits Ms. Yuhasz has filed in state court, some of which have already been resolved. It is thus possible that this court lacks subject matter jurisdiction to consider this suit under the *Rooker-Feldman*

Judge Stanton is not, as is claimed in the Moving Defendants' brief, entitled to judicial immunity from suit against him in his individual capacity arising out of the above-described conduct because at the time of that conduct he was acting in an administrative rather than judicial capacity.[14] See Forrester v. White, 484 U.S. 219, 228-30 (1988) (state court judge who demoted and discharged a probation officer not entitled to absolute judicial immunity from ¶ 1983 damages suit because when he engaged in the complained-of conduct he was acting in his administrative capacity). The claims against him, however, should be dismissed on other grounds,

Ms. Yuhasz claims that Judge Stanton's allegedly retaliatory transfer violated her First Amendment rights. To state a cause of action under § 1983 for retaliation for activity protected by the First Amendment, a plaintiff must allege (1) that she engaged in the protected activity and (2) that the protected activity was a substantial or motivating factor behind the complained-of action, i.e., that the complained-of action was retaliation. Brennan v. Norton, 350 F.3d 399, 412-414 (3d Cir, 2004); Baldassare v. New Jersey, 250 F.3d 188, 195 (3d Cir. 2001); Azzaro v. County of Allegheny, 110 F.3d 968, 975 (3d Cir. 1996).[15]

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doctrine or is barred from considering this suit by the principles of *res judicata*. Because, as mentioned above, neither Ms. Yuhasz nor the Moving Defendants saw fit to provide the court with a comprehensive list of all Ms. Yuhasz's suits and their statuses, the court does not know if it should refrain from resolving these claims for reasons of preclusion, and has no choice but to forge ahead and address the merits of the claims Ms. Yuhasz has asserted in her Amended Complaint.

[14] New Jersey Rule of Court 1:34-5 provides that "Court Reporters shall...be...under the supervision of...the Assignment Judge of the county."

[15] A defendant may defeat the plaintiff's claim by demonstrating that he would have acted no differently in the absence of plaintiff's protected conduct. See e.g. Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 287 (1977); Baldassare, 250 F.3d at

Ms. Yuhasz engaged in activity protected by the First Amendment when she filed her grievances with the AOC. Ordinarily, a public employee's speech must involve a matter of public concern for it to qualify as protected activity against which a public employer may not retaliate. Brennan, 350 F.3d at 412. In the Third Circuit, however, the filing by a public employee of a non-frivolous or "non-sham" grievance pursuant to a collective bargaining agreement - regardless of whether the grievance addresses matters of public concern - qualifies as protected activity.[16] Id. at 417; San Filippo v. Bcvtgiovanni, 30 F.3d 424, 443 (3d Cir. 1994).[17] The

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195. Because the standard for Rule 12(b)(6) motions contemplates decisions based on a complaint's factual allegations, the Court need only focus on the first two steps mentioned above. Pollock v. city of Ocean city, 968 F. Supp. 187, 191 (D.N.J. 1997).

[16] Even if this were not true, the grievances Ms. Yuhasz filed – which she described as alleging "falsification of business records[and the] misappropriation of County monetary funds" by state court officials – would probvably qualify as protected speech because they likely addressed a matter of public concern. See, e.g., Baldassare, F. 3d at 195 ("The content of the speech may involve a matter of public concern if it attempts to bring to light actual or potential wrongdoing or breach of public trust on the part of government officials")(internal quotation and citation omitted); Swineford v. Snyder County Pennsylvania, 15 F.3d 1258, 1271 (3rd Cir. 1994)("speech disclosing public officials' misfeasance is protected"); O'Donnell v. Yanchulis, 875 F.2d 1059, 1061 (3rd Cir. 1989)("Needless to say, allegations of corrupt practices by government officials are of the utmost public concern").

[17] The Court of Appeals justifies the distinction in this way:

> When government – federal or state – formally adopts a mechanism for redress of...grievances for which the government is allegedly accountable, it would seem to undermine the Constitution's vital purposes to hold that one who in good faith files an arguably meritorious "petition" invoking that mechanism may be disciplined for such invocation by the very government that in compliance with the petition clause has given the particular mechanism its constitutional imprimatur.

question whether grievances filed by public employees are "frivolous" or "mere shams" is a question of fact. See Bradshaw v.Township of Middletown, 296 F.Supp.2d 526, 546 (D.N.J. 2003) (interpreting "non sham petition" in this context to mean grievance filed in apparent good faith). In this procedural posture, the court thus must assume that the grievances Ms. Yuhasz filed were "non-sham," Ms. Yuhasz therefore clears the first hurdle of her §1983 retaliation claim.

To survive a motion to dismiss, however, Ms. Yuhasz's complaint must also allege that she suffered retaliation for engaging in protected activity. Courts have found that plaintiffs have so alleged when (1) they have claimed that the adverse employment action they suffered was retaliation for engaging in protected activity and (2) the alleged facts do not conflict with this claim, but rather give rise to the inference that it is correct. See e.g. Bowles v. City of Camden, No. CIV.A. 96-4907, 1997 WL 202096, at *4 (D.N.J. Apr. 17, 1997) (plaintiff claimed termination was retaliation and termination occurred only months after plaintiff made protected statements); Pollock v. City of Ocean City, 968 F.Supp. 187, 192 (D.N.J. 1997) (plaintiff claimed termination was retaliation and termination occurred only weeks after plaintiff engaged in protected conduct).

Ms. Yuhasz claimed in the Amended Complaint that Judge Stanton retaliated against her for filing grievances in violation of her First Amendment rights. Amended Complaint ¶ 166. The facts she has alleged, however) conflict with this claim. Specifically, Ms. Yuhasz stated in one of the state court complaints "incorporated" into her Amended Complaint, that *before* she filed her first grievance Judge Stanton had publicly stated that she "was going to be transferred," ESX-L-3281-00 ¶ 47.

San Filippo, 30 F.3d at 442.

In this procedural posture, the court must assume that all facts alleged in the complaint are true. If Judge Stanton had stated that plans to transfer Ms. Yuhasz were afoot before she filed her grievance, her transfer could not logically have been retaliation for her filing of the grievances. "The court will not accept conclusory allegations concerning the legal effect of the events plaintiff has set out if these allegations do not reasonably follow from his description of what happened, or if these allegations are contradicted by the description itself." 5A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE ¶ 1357 (2d ed. 1986). The court will thus dismiss Ms. Yuhasz's ¶ 1983 claim for violation of her First Amendment rights against Judge Stanton in his individual capacity.

The allegations in the Amended Complaint also do not form the basis for the ¶ 1983 claims Ms. Yuhasz brings against Judge Stanton in his individual capacity for violation of her Fifth, Seventh and Fourteenth Amendment rights. For this reason, the court dismisses these claims as well.

B. Chief Justice POritz & Judge Ciancia

Ms. Yuhasz's federal RICO and § 1983 claims against Chief Justice Poritz in her individual capacity, and her 1983 claims against Judge Ciancia in his individual capacity must also fail because Ms. Yuhasz would have failed to state claims under these statutes even if all the facts in the Amended Complaint are true.

Ms. Yuhasz alleges that in May or June 1995 - after she was transferred out of the Morris County vicinage - AOG representatives surreptitiously altered the CBA to make the transfer licit under it.[18] Then, in December 1999, the AOC

[18] Amended Complaint ¶ 82; ESX-L-3281-00 ¶ 296

informed her that she was to be terminated from her position, as court reporter.[19] Under the New Jersey Administrative Code, state employees usually must be served with both a Preliminary Notice of Disciplinary Action and a Final Notice of Disciplinary Action before they are terminated. N.J. ADMIN. CODE ¶ 4A:2-2.5. Ms. Yuhasz alleges that Judge Ciancia (who was at the time Administrative Director of the Courts) never served Ms. Yuhgsz with either.

Ms. Yuhasz appears to allege that Chief Justice Poritz is liable for violation of the federal RICO statute and that Chief Justice Poritz and Judge Ciancia are liable for violation of Ms. Yuhasz's constitutional rights due to their participation in these incidents, Ms. Yuhasz describes that participation in this way; Chief Justice Poritz (who was at that time New Jersey Attorney General) "colluded" in unspecified ways with the other defendants to cover up the fact of the CBA alteration, Amended Complaint ¶ 83-84. Chief Justice Poritz then approved Judge Ciancia's failure to serve Ms. Yuhasz with Notices of Disciplinary Action. Amended Complaint ¶¶ 94-96).[20]

Ms. Yuhasz's RICO claim against Chief Justice Poritz must fail. Under 18 U.S.C. § 1962(c), it is "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." "A violation of § 1962(c) [thus]...requires (1) conduct,

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[19] Amended Complaint ¶ 87; MER-L-1623-00 ¶ 42

[20] Like Judge Stanton, Chief Justice Poritz is not entitled to judicial immunity from suit on these claims because she engaged in conduct that gave rise to them in her administrative capacity. Contrary to what Moving Defendant argue in their motion to dismiss, Judge Ciancia is also not entitled to judicial immunity from this suit as he was not yet a judge when he engaged in the conduct that gave rise to the suit.

(2) of an enterprise (3) through a pattern (4) of racketeering activity." Sedima v. Imrex Company, 473 U.S. 479, 495 (1985).

18 U.S.C. § 1961 defines "racketeering activity" as any act which is indictable under an exhaustive list of federal crimes) or "any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical...which is chargeable under State law and punishable by imprisonment for more than one year." See Rose v. Bartle, 871 F.2d 331, 358 (3d Cir, 1989). None of the conduct of which Ms. Yuhasz accuses Chief Justice Poritz constitutes "racketeering activity." The court thus dismisses Ms. Yuhasz's RICO claim.

Ms. Yuhasz's constitutional claims against Judge Ciancia and Chief Justice Poritz must also fail. None of the facts Ms. Yuhasz alleges form the basis for her claims that these judges in their individual capacities violated her First or Seventh Amendment rights. The court thus dismisses these claims.

Further, the facts alleged are insufficient to state a claim for violation by Chief Justice Poritz and Judge Ciancia of Ms. Yuhasz's procedural due process rights. When a plaintiff brings a § 1983 suit for deprivation of procedural due process rights, the court must determine whether the state deprived the plaintiff of a liberty or property interest and, if so, whether she received the process to which she was entitled before being so deprived. Alvin v. Suzuki, 227 F.3d 107, 116 (3d Cir, 2000). Under the U.S. Constitution, a tenured public employee is "entitled to oral or written notice of the charges against [her], an explanation of the employer's evidence, and an opportunity to present [her] side of the story,"

Cleveland Board of Education v. Loudermill, 470 U.S. 532, 546 (1985).

Even assuming Ms. Yuhasz had a property interest in her continued employment (an extra-constitutional question),[21] Ms. Yuhasz has not adequately alleged that Judge Ciancia or Chief Justice Poritz deprived her of the process to which the constitution entitles her before she was terminated.[22] Ms. Yuhasz alleges that she did not receive Preliminary or Final Notices of Disciplinary Action. Amended Complaint ¶¶ 88-89 & 95-96. This alone would not necessarily violate even the New Jersey Administrative Code, much less the U.S. Constitution.[23]

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[21] Property interests are not created by the Constitution, but rather "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972).

[22] Ms. Yuhasz alleges that AOC representatives informed her "that they would issue formal charges of termination against her pending a hearing," but then "refused to grant [her a face-to-face] due process hearing," MER-L-1623-00 ¶ 43. This could (but would not necessarily constitute a procedural due process violation. Ms. Yuhasz does *not* allege, however, that Chief Justice Poritz or Judge Ciancia were in any way personally involved in the alleged AOC refusal to grant her a hearing. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3rd Cir. 1988)("Adefendant in a civil rights action must have personal involvement in the alleged wrongs"). Further, Ms. Yuhasz indicates that AOC representatives *did* provide her with reasons for her termination. MER-L-1623-00 ¶ 45.

[23] N.J. ADMIN. CODE § 4A:2-2.5 provides that

> (a) An employee must be served with a Preliminary Notice of Disciplinary Action setting forth the chargesd and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except:
>
> 1. An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit

Without more alleged information the court cannot determine whether Ms. Yuhasz has stated a claim for deprivation of her procedural due process rights. Ms. Yuhasz has not alleged that she was not given any form of "oral or written notice of the charges against her," or an opportunity to respond, which allegation would be required to state a claim for deprivation of a property right without procedural due process. Id. Athough the court must assume as true all facts alleged, "it is not...proper to assume that [Ms. Yuhasz] can prove any facts that [she] has not alleged or that the defendants have violated the...laws in ways that have not been alleged." Associated General Contractors of Calif.. Inc., v. California State Council of Carpenters, 459 U.S. 519, 526 (1983). For this reason, the court dismisses Ms. Yuhasz's § 1983 claims that Judge Ciancia and Chief Justice Poritz in their individual capacities violated her procedural due rights.

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for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order of effective direction of public services. However, a Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

2. An employee may be suspended immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job.

Ms. Yuhasz has not given the court enough information to know whether any of those exceptions apply here.

C. The Other Judges

Ms. Yuhasz's § 1983 claims against the defendant judges besides Judges Stanton and Ciancia, and Chief Justice Poritz ("other judges") in their individual capacities must also fail because the other judges are entitled to judicial immunity from a suit for damages on these claims. Moreover, the court lacks subject matter jurisdiction to consider Ms. Yuhasz's requests for non-monetary relief against the other judges.

Ms. Yuhasz's § 1983 damages claims and requests for injunctive relief against the other judges arise out of conduct in which these judges engaged in relation to the various actions and appeals Ms. Yuhasz has filed in the New Jersey courts since 1995. As these action wended their way through the courts, Ms. Yuhasz claims that the other judges wronged her in the following ways:

> ** "Judges Feinberg, Shuster and Sapp-Peterson collud[ed] with...Judges Falcone, Freedman, Goldman, Minuskin, Payne and Winard by failing to consolidate [her] various complaints, denying her discovery, and dismissing her complaints in piece-meal fashion." Amended Complaint ¶ 84 (c).
>
> *Judges Feinberg, Shuster, Sapp-Peterson, Falcone, Freedman, Goldman, Minuskin, Payne and Winard "colluded" with all of the other named Defendants to "bar [her] from being heard in support of four complaints she had filed by denying [her] discovery and an opportunity to be heard in opposition to

motions to dismiss her complaints." Amended Complaint ¶ 84 (d).

*Judge Sapp-Peterson entered various orders resolving different parts of Ms. Yuhasz's lawsuit, refusing to recuse herself, and refusing to conduct a case management conference. Amended Complaint ¶¶ 92, 93, 125, 126, 137, 138, 142, 147-150 & 239-446.

*Judges Rodriguez, Lefelt and Lisa denied her motion for leave to file a reply brief out of time, and "authored an opinion maligning [her) personal and mental character as a basis for their opinion in not considering the full merits of [her] appeal." Amended Complaint ¶¶ 84 (f), 132, 133, 136 & 249-56.

*Judges King, Pressler and Petrella dismissed one of Ms. Yuhasz's appeals and denied her "the right to be heard with respect to" that appeal. Amended Complaint ¶¶ 84 (e) & 259-66.[24]

1. Claims for Damages[25]

The other judges are clearly entitled to judicial immunity from a civil suit for damages against them in their individual capacities that arises out of this conduct. It has long been recognized that "judges of courts of

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[24] Defendants Judges Conley and Codey are named in the caption of the Amended Complaint, but Ms. Yuhasz makes no allegations against them in the body of that complaint. Consequently, she has failed to state a claim against them for which relief may be granted. The court thus dismisses the claims against these defendants.

[25] To the extent that any of these claims asks the court to exercise appellate jurisdiction over the state court decisions listed above, the court lacks jurisdiction to do so under the *Rooker-Feldman* doctrine.

superior or general jurisdiction are not liable to civil actions for their judicial acts." Stump v. Sparkman, 435 U.S. 349, 355 (1978) (quoting Bradley v. Fisher, 13 Wall. 335, 347 (1872)). A judge will not be deprived of this immunity even if he or she acted erroneously or with malice. See, e.g. Stump, 435 U.S. at 356-57; Gallas v. Supreme Court of Pennsylvania, 211 F.3d 760, 769 (3d Cir. 2000). This absolute immunity is necessary to enable judges to "act upon [their] own convictions, without apprehension of personal consequences to [themselves]." Stump, 435 U.S. 355

To determine if a defendant judge is immune from suit over specific conduct, the court must answer two questions; (1) whether the conduct is comprised of "judicial acts," and (2) whether the judge had jurisdiction to engage in the acts. Stump, 435 U.S. at 356 & 360; Gallas, 211 F.3d at 768; Johnson v. State of New Jersey, 869 F. Supp. 289, 293 (D.N.J. 1994). Notwithstanding Ms. Yuhasz's assertion that some of the acts listed above were "administrative in nature,"[26] it could not be clearer that they are judicial acts. Making decisions such as whether or not parties are entitled to discovery, whether or not to grant motions to dismiss, whether parties are entitled to oral argument on their motions, whether a judge should recuse herself from a certain case, and when and whether to conduct a case management conference, are central to what a judge does.

The second criteria of Stump and Gallas is also met in this case. There is no question that the judges had jurisdiction to make the decisions to which Ms. Yuhasz objects. The Superior Court has original general jurisdiction throughout the State on all causes. N.J. CONST., art. VI, ¶ 3, ¶ 2, The Appellate Division has

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[26] Amended Complaint ¶¶ 241, 243-46, 251, 253-56, 261-66.

jurisdiction over appeals from final judgments of the Superior Court trial divisions. NJ. Rule 2:2-3 (a) (1).

For these reasons, the court dismisses the § 1983 claims for damages Ms. Yuhasz has brought against the other judges in their individual capacities.

2.Claims for Equitable Relief

In addition to money damages, Ms. Yuhasz has requested non-monetary relief against some of the other judges. Specifically Ms. Yuhasz asks this court to "vacate" and declare "null and void" the following orders because, in issuing these orders, Judges Sapp-Peterson, Rodriguez, Lefelt, Lisa, Pressler and Petrella violated her constitutional rights: (1) a September 12, 2000 order issued by Judge Sapp-Peterson granting summary judgment on the merits to Defendants on various of Ms. Yuhasi's employment discrimination claims, (2) an April 24, 2002 order issued by Judges Rodriguez, Ldelt and Lisa affirming Judge Sapp-Peterson's order, and (3) a June 19, 2002 order issued by Judges Pressler and Petrella "dismissing" Ms. Yuhasz's appeal of Judge Goldman's earlier dismissal of another of her Complaints. See Amended Complaint ¶¶ 237-266.[27] The court lacks subject matter jurisdiction to consider these claims.

In the Amended Complaint, Ms. Yuhasz characterizes the relief she seeks as "injunctive," but states clearly that she seeks this relief pursuant to 28 U.S.C. § 2201 (the Declaratory Judgment Act). Despite her reference to 28 U.S.C. § 2201 and her use of the word "declare,"

[27] Ms. Yuhasz did not submit copies of any of these Orders with her Amended Complaint.

however, Ms. Yuhasz is not seeking declaratory relief in the true legal sense.[28]

Rather, Ms. Yuhasz's request for non-monetary relief is in essence a request that this court *review* and overturn the decisions of the New Jersey Superior Court and Appellate Division. As such, it is barred by the *Rooker-Feidman* doctrine, which "prevents lower federal courts from "sit[ting] in direct review of the decisions of a state tribunal." Exxon Mobil Corp.. v. Saudi Basic Industries Corp., No. 02-2130, 2004 WL 574889, at *2 (3d Cir. Dcc. 9,2003). Under 28 U.S.C. § 1257, the United States Supreme Court has jurisdiction to review a decision by "the highest court of a State in which a decision [may) be had." Since Congress has never conferred a similar power of review on the United States District Courts, the Supreme Court has inferred that Congress did not intend to empower District Courts to review state court decisions. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983).

A claim is barred by the *Rooker-Feidman* doctrine under two circumstances: first, if the claim was "actually litigated" in state court prior to the filing of the federal action or, second, if the claim is "inextricably intertwined with [the) state adjudication." Exxon Mobil Corp. at *2, "A plaintiff's claim for relief in a federal action is 'inextricably intertwined' with an issue adjudicated by a state court "when the federal court must...take action that would render [the state court's) judgment ineffectual." Desi's Pizza, Inc. v. City of Wilkes-Barre, 321 F.3d 411, 421 (3d Cir. 2003). See also FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996) ("If the relief requested in the

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[28] She asks the court to "declare" the judges' orders "to be invalid, null and void," but declaratory judgments are meant to define the legal rights and obligations of the parties in the anticipation of some future conduct. See 28 U.S.C. § 2201; Johnson v. McCuskey, 72 Fed. Appx. 475, 478 (7th Cir. 2003).

federal action. . . would void the state court's ruling, then the issues are inextricably intertwined and the district court has no subject matter jurisdiction to hear the suit."); Stern v. Nix, 840 F.2d 208, 212 (3d Cir. 1988) ("any attempt to enjoin the enforcement of a state court judgment...is suspect").

The claim that the state court judges' rulings violated Ms. Yuhasz's constitutional rights was obviously not "actually litigated" in the state court. It is, however, "inextricably intertwined" with the state adjudication because Ms. Yuhasz has explicitly asked the court to "take action that would render the state court's judgment ineffectual," i.e., declare it "null and void," For this reason, the court lacks subject matter jurisdiction to consider Ms. Yuhasz's claim.

That Ms. Yuhasz claims that in issuing the state court rulings, the judges violated her *constitutional* rights does not change this result. "A district court still does not have jurisdiction over 'challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional.'" Stern, 840 F.3d at 211. "It is settled that a plaintiff may not seek a reversal of a state court's judgment simply by casting his complaint in the form of a civil rights action." Ritter v. Ross, 992 Fd 750, 754 (7th Cir. 1993). See District of Columbia Court of Appeals v. Feldman, 460 .S. 462, 486-87 (1983) (under the *Booker-Feldman* doctrine, court lacked jurisdiction to consider claim that the District of Columbia Court of Appeals violated plaintiffs' Fifth Amendment rights when it refused to waive the rule requiring applicants for admission to the bar to have graduated from an ABA-accredited law school).[29]

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[29] See also, e.g., Reilly v. Weiss, No. 97-CV-05883, 1998 WL 1110695, at *1 n.3 (D.N.J. June 15, 1998))Barry, J.)(*Rooker-Feldman* doctrine required dismissal of plaintiff f § 1983 claim that, *inter alia*, New Jersey judges violated his civil rights by failing to grant him of

The court thus dismisses Ms. Yuhasz's claims for non-monetary relief against Judges Sapp-Peterson, Rodriguez, Lefelt, Lisa, Pressler and Petrella in their individual capacities for lack of subject matter jurisdiction.

VII. Claims against the AOC and the Defendant Judges in their Official Capacities

Both the AOC and the defendant judges (in their official capacities) enjoy Eleventh Amendment immunity from suit on Ms. Yuhasils federal claims for damages. The Eleventh Amendment immunizes states "from suits brought in federal courts by her own citizens as well as by citizens of another state." Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 100 (1984).[30]

An *agency* of the state "is entitled to immunity from suit in a federal court under the Eleventh Amendment when a judgment against it 'would have had essentially the same practical consequences as a judgment against the State

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custody of his son); Ricciuti v. Alander, No. Civ. 3:03 CV 708, 2004 WL 555235, at *2(D. Conn. March 17, 2004)(*Rooker-Feldman* doctrine barred federal court from considering plaintiff's § 1983 claim that Connecticut Superior Court judge violated his civil rights when he issued a decision in a divorce action); Arena v. Dept. of Social Services, et al., 216 F.Supp. 2d 146. 152 (E.D.N.Y. 2002)(*Rooker-Feldman* doctrine barred federal court from considering plaintiff's § 1983 claim that Family Court judge's determination regarding child visitation violated his civil rights).

[30] While this immunity from suit is not absolute, the Supreme Court has recognized only two circumstances in which an individual may sue a State: (1) Congress may abrogate sovereign immunity and authorize such a suit, or (2) a state may waive sovereign immunity by consenting to such a suit. College Sav. Bsank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 670 (1999). Neither of these exceptions apply here as § 1983 did not abrogate the Eleventh Amendment immunity of the states, Quern v. Jordan, 440 U.S. 332, 341 (1979), and New Jersey has not waived its sovereign immunity from suit against its agencies and officers under § 1983, McNeil v. McDonough, 515 F. Supp. 113, 122 (D.N.J. 1980).

itself.'" Fitchik v. New Jersey Transit Rail Operations, Inc., 873 F.2d 655, 658 (3rd Cir. 1989)(quoting Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391, 401 (1979)) To determine if a state agency is immune from suit, courts examine evidence of three factors"a1)the source of funding – i.e., whether payment of any judgment would come from the state's treasury, (2) the status of the agency under state law, and (3) the degree of autonomy from state regulation. Carter v. City of Philadelphia, 181 F.3d 39, 347 (3rd Cir. 1999); Fitchik, 873 F.2d at 659. A court in this district has explicitly held that New Jersey's AOC is a state agency that the Eleventh Amendment immunizes from suit. Johnson v. State of New Jersey, 869 F. Supp. 289, 298 (D.N.J. 1994).

State officials sued in their official capacity are also entitled to Eleventh Amendment immunity even if the state is not named as a party to the action as long as the state is the real party in interest. Carter v. City of Philadelphia, 181 F.3d 339, 347 (3rd Cir. 1999); 17A-123 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 123.21 [7](3d ed. 1997). The defendant judges are employees of the State of New Jersey. A suit against them in their official capacities is a suit against the state. See Will v. Michigan dep't of State Police, 491 U.S. 58, 71 (1989)("a suit against a state official in his or her official capacity is not a suit against the official but rather a suit against the official's office. As such, it is no different from a suit against the State itself"). They are thus entitled to immunity from suit. See Hunter v. Supreme Court of New Jersey, 951 F.Supp. 1161, 1178 (D.N.J. 1996) (official-capacity suits against New Jersey state judges barred by the Eleventh Amendment). The court therefore dismisses Ms. Yuhasz's federal claims for damages against the AOC and against the defendant judges in their official capacities.

Ms. Yuhasz argues that because she sues some of the defendant judges in their capacities as her former employer,

and New Jersey has consented to be sued in that capacity under the NJLAD,[31] the court cannot dismiss her NJLAD claim on Eleventh Amendment grounds. Because the court has dismissed all of Ms. Yuhasz's federal claims, however, it may and does decline to exercise supplemental jurisdiction over her pendent state claims, including her claim under the NJLAD. 28 U.S.C. § 1367 (c) (3).

CONCLUSION

For the reasons stated herein, the court dismisses Ms. Yuhasz's claims against the AOC and the twenty defendants judges.

S/Dickinson R. Debevoise

DICKINSON R. DEBEVOISE, U.S.S,D.J.

Dated: April 12, 2004

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[31] See, e.g., Rudolph v. Adamar of New Jersey, Inc., 153 F. Supp. 2d 528, 543 (D.N.J. 2001)("Suits brought against the State as an employer are clearly within the scope of the explicit waiver of sovereign immunity contained in J.J.S.A. § 10:5-5(e); §§ 10:5-12(a)(c).")

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ, CSR, RPR.,

Civil Action No. 03-0250(DRD)

Plaintiff,

-v-

OPINION

CHIEF JUSTICE DEBORAH T. PORITZ, JOHN C. KENNEDY,ESQ., et al. Defendants.

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UNITED STATES
DISTRICT COURT

Joanne N. Yuhasz
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Pro Se Plaintiff

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Attorneys for the Defendant

DEBEVOISE, Senior District Judge

Plaintiff Joanne N. Yuhas ("Ms. Yuhasz") was a court reporter in the New Jersey state court system until 2000. She alleges the existence of a vast conspiracy - during the period of her employment at the court and after - to silence her, inflict emotional distress on her, and facilitate and then conceal, *inter alia,* allegedly improper actions that were taken to enable her involuntary transfer from one vicinage to another in 1995, Involved in this conspiracy, she asserts, was a list of individuals and groups that is four pages long, and that includes the Administrative Office of the Courts of New Jersey, many individual New Jersey state court judges, several individual lawyers and law firms, the New Jersey Attorney General, and the Certified Shorthand Reporters Association of New Jersey ("CSRA/NJ").[1] In June 2003 she filed a complaint ("the instant complaint") against all of them, bringing a panopoly of state tort law claims and claims arising under several federal statutes including the Racketeer Influenced Corrupt Organizations Act ("RICO").

This court has already decided three motions in this case. In February 2004, I denied Ms. Yuhasz's motion requesting my recusal on the ground that no person could reasonably question my impartiality under the circumstances. Yuhasz v. Chief Justice Deborah T. Poritz. et al.., No. 03-02750, slip op. (D.N.J. February 24, 2004). In April 2004, the court dismissed all claims Ms. Yuhasz made against the Administrative Office of the Courts of New Jersey and twenty judges of the New Jersey state courts who are named as defendants.[2] See Yuhasz v. Chief Justice Deborah T. Poritz. et al., No. 03-02750, slip op. (D.N.J. April 12, 2004).

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[1] On February 11, 2004, Ms. Yuhasz voluntarily dismissed her Complaint against many of these Defendants, including the CSRA/NJ.

[2] On April 7, 2004, the court also denied Ms. Yuhasz's motion for leave to file a RICO Case Statement and a Second Amended

In between the February 24 decision and the April 12 decision, the court decided a motion to dismiss that had been filed by Christopher J. Carey, Esq. ("Mr. Carey"), Andrew N. Kessler, Esq. ("Mr. Kessler"), and Hoagland, Longo, Moran, Dunst & Doukas ("Hoagland") (collectively, "the Carey Defendants"). That motion was intimately related to the instant motion. The Carey Defendants had represented Ms. Yuhasz's former attorneys in a 1996 malpractice suit ("Suit #1") she brought against those attorneys in New Jersey Superior Court, Morris County.[3] Ms. Yuhasz claimed that the Carey Defendants engaged in discovery abuses of various stripes during Suit #1. Consequently, in 1999, she filed a complaint ("Suit #2") against *them* (among others) in the Superior Court of New Jersey, Law Division, Morris County, in which she accused them of "abuse of process, obstruction of justice and judicial misconduct.[4] The Carey Defendants moved to dismiss this complaint and Judge Winard granted those motions.

When Ms. Yuhasz filed the instant complaint in this court 'alleging the vast conspiracy against her, she named the Carey Defendants as defendants, She alleged, however, that the only way in which they participated in this conspiracy was by engaging in the alleged discovery abuses that were the subject of Suit #2. Because a court had already adjudicated claims arising from that conduct, however, the court held that it was precluded under New Jersey's Entire Controversy Doctrine from adjudicating the claims Ms. Yuhasz brought against the Carey Defendants in the instant

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Complaint, and to postpone until those has been filed entry of judgment on all Defendants' motions to dismiss.

[3] The lawsuit was later transferred to the Superior Court in Essex County.

[4] This lawsuit, like the one that spawned it, was also ultimately transferred to the Essex County Superior Court.

complaint.[5] The court thus granted the Carey Defendants' motions to dismiss. Yuhasz v. Chief Justice Deborah T. Poritz, et al., No. 03-02750, slip op. (D.N.J. February 27, 2004).

Before the court presently is a motion by another of the defendants named in the instant complaint, John C. Kennedy, Esq. ('Mr. Kennedy"). Like the Carey Defendants, Mr. Kennedy's firm - O'Donnell, Kennedy, Vespole & Piechta - represented one of Ms. Yuhasz's former attorneys in Suit #1. Mr. Kennedy was "lead defense counsel" in that suit.[6] O'Donnell, Kennedy, Vespole & Piechta was named as a defendant in Suit #2. It does not appear that Mr. Kennedy was individually named as a defendant in Suit #2, but the Entire Controversy Doctrine nonetheless bars the court from considering Ms. Yuhasz's claims against him (as it did the claims against the Carey Defendants) because he is in privity with his firm. McNeil v. Legislative Apportionment Com'n of State, 828 A.2d 840, 859 (N.J. 2003) (affirming that claim preclusion requires that (1) the judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to *or in privity with* those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one) (emphasis added).

For this reason the court will dismiss with prejudice all of Ms. Yuhasz's claims against Mr. Kennedy.

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[5] The court also found that at least one of Ms. Yuhasz's claims in the instant complaint (the federal RICO claim) failed on the merits as against the Carey Defendants.

[6] See ¶ 80 of the Complaint Ms. Yuhasz filed in the Superior Court of New Jersey, Law Division, Morris County on April 1, 1999 (docket number MRS-L-845-99).

s/Dickinson R. Debevoise

DICKINSON R. OEBEVOISE U.S,S.D.J.

June 11, 2004

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ, CSR, RPR.,

Civil Action
No. 04-
1508(JAP)

Plaintiff,

-v-

OPINION

BRUCE D. LEDER, ESQ., et al.

Defendants.

PISANO, District Judge:

Before the Court is *pro se* Plaintiff Joanne Yuhasz's ("Ms. Yubasz") motion seeking this Court's recusul from this matter. The Court will decide this motion without oral argument, as permitted by Fed. R. Civ. P. 78. After carefully considering the movant's written submissions, and for the reasons that follow, the motion is denied.

Ms. Yuhasz's complaint presents the Court with a legal matrix numbering 332 paragraphs, fifteen counts, and forty-four named defendants. She seeks relief against lawyers, law firms, state and federal judges, the entire New Jersey Judiciary, collective bargaining agencies, unions, administrative agencies, and the Attorney General for the

State of New Jersey. Ms. Yuhasz began litigating her claims in state court nearly a decade ago and, given the numerosity of defendants and claims, this litigation has become quite cumbersome and burdensome on all parties involved. Moreover, as the Procedural History reveals below, her claims are duplicative. Nonetheless, because of Ms. Yuhasz's status as *pro* se Plaintiff, the Court has read the complaint and each of her subsequent submissions liberally and with great care, including the present motion for the Court's recusal from this matter. *Estelle v. Gamble,*429 U.S. 97, 106 *(1976); Alston v. Parker,* 363 F.3d 229, 234 (3d Cir. 2004).

I. PROCEDURAL HISTORY

Ms. Yuhasz's current complaint, filed on March 31, 2004, is a mirror image of a June 9, 2003 complaint, styled *Yuhasz v. Chief Justice Deborah T. Poritz, et* at, 03-2750.[1] The only material difference is the addition of a new defendant, Senior United States District Judge Dickinson R. Debevoise, who was the presiding Judge in 032750.[2] In that action, Judge Debevoise dismissed Ms. Yuhasz's Complaint against numerous defendants, including certain individual attorneys and law firms, *see Yulzasz v. Chief Justice Deborah T Poritz,* et at, 03- *2750,* slip op. (D.N.J. Feb. 27, 2004), Yuhasz *v. Chief Justice Deborah T. Poritz, et al.*, 03-2750, slip op. (D.N.J. June 11, 2004), and the New Jersey Administrative Office of the Courts and twenty defendant judges, *Yuhasz v. Chief Justice Deborah T Poritz, et al.*, 03-2750, slip op. (D.N.J. April 12, 2004).[3] Judge Debevoise

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[1] Ms. Yuhasz first filed in this Court on April 24, 2003, in a case styled *Yuhasz v. Hon. Ariel Rodriguez, et al.*, 03-1830. Judge Debevoise signed a Consent Order dismissing that complaint without prejudice.

[2] Chief Judge John W. Bissell signed an Order on April 19, 2004 dismissing all claims against Judge Debevoise on grounds of judicial immunity.

[3] In 03-2750, Ms. Yuhasz also voluntarily dismissed her Complaint against the New Jersey Attorney General, many of the

further exercise his discretion and declined to accept supplemental jurisdiction over Ms. Yuhasz's state law claims. Ms. Yuhasz is appealing those rulings to the United States Court of Appeal for the Third Circuit, as indicated by a second amended notice of appeal dated September 4, 2004.

Ms. Yuhasz has filed numerous state court claims and administrative grievances over the past ten years, and her federal court complaints reflect the culmination of her experiences to date. The complaints in 03-2750 and in this case allege that, while employed as a court reporter by the New Jersey judiciary, Ms. Yuhasz. experienced a hostile work environment and, after pursuing grievances, suffered unlawful retaliatory action in the form of a job transfer and, years later, a forced retirement. She further alleges that an illegal change in her collective bargaining agreement and a subsequent illegal union takeover facilitated her job transfer. Ms. Yuhasz claims she is the victim of a conspiracy to silence her from revealing "falsification of business records, misappropriation of Count monetary funds and unlawful discriminatory employment practices" by the state judiciary. Finally, Ms. Yuhasz sets forth allegations of legal malpractice, obstruction of justice and denial of due process against the numerous judges, attorneys and law firms she has dealt with during the prosecution of her claims.

In the current matter, several defendants filed Motions to Dismiss under Fed. R. Civ. P. 12(b)(6), and some of those motions included a request for a bar order enjoining Ms Yulasz from any future filings. During the week of September 27, 2004 Ms. Yuhasz contacted the Court to request an adjournment of the return date on those motions because recent eye surgery made it difficult for her to concentrate and work on the computer. The Court obliged

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individual lawyers, law firms and other organizations such as the Certified Shorthand Reporters Association of New Jersey (CSRA/NJ).

and, pursuant to her specific request, adjourned the October 25 return date to November 8.

On October 4, Ms. Yuhasz filed a Motion to Stay the Complaint and All Dispositive Motions Pending Resolution of Grand Jury Investigation. Between October 4 and October 15, numerous defendants filed oppositions to Ms. Yuhasz's motion to stay, two additional Motions to Dismiss were filed (one by defendant, the law firm of Tompkins, McGuire, Wachenfeld & Barry LLP), and another defendant, Keith A. MeKenna, Esq, filed a letter requesting to join in the Motions to Dismiss of defendants Christopher J. Carey, Esq. and Stephen A Weinstein, Esq

On October 18, Ms. Yuhasz requested another adjournment on the motions to dismiss to November 22, allowing her until November 8 to file her opposition. On that same day, Ms. Yuhasz sent a letter to the Court arguing that the Tompkins McGuire motion to dismiss was time-barred. Ms. Yuhasz also asked that the Court not consider Defendant McKenna's letter request as a motion to dismiss because it did not comply with formal motion practice.

On October 20, the Court acquiesced to Ms. Yuhasz's request for a second adjournment, and also agreed to keep the November 8 return date for her Motion to Stay. Also on October 20, the Court received Ms. Yuhasz's Request to Enter Default against thirteen defendants. On October 29, the Court received a Motion to Enter Default Against Certain Defendants, For Partial Summary Judgment On Liability Against Defaulting Defendants, and For Trial By Jury Against Defaulting Defendants To Assess Monetary Damages On Behalf Of Plaintiff despite there being no indication that the Clerk had entered default. On November 1, Ms. Yuhasz filed a third adjournment request on the motions to dismiss, and a reply in support of her motion to stay.

On November 4, after having considered the parties' submissions, this Court filed an Order denying Plaintiff's motion to stay and her request for a third adjournment. The following day, on November 5, Ms. Yuhasz filed an Affidavit seeking recusal pursuant to 28 U.S.C. § 144. This is the motion presently before the Court. She seeks the Court's recusal by alleging against the undersigned:

> (a) Obstruction of Justice - interfering with a criminal investigation by conducting ex parte communications with the U.S. Attorney's Office thereby jeopardizing Plaintiffs pending criminal complaint and investigation;
>
> (b) Exhibiting bias and prejudice towards Plaintiff.

(Yuhasz Aft. at 2). Additionally, Ms. Yuhasz argued in her brief that this Court's recusal is required under 28 U.S.C. §455(a) because the Court's "impartiality might reasonably be questioned."

II DISCUSSION

Pursuant to 28 U.S.C. § 144, a district judge is required to recuse if personal bias or prejudice exists against or in favor of any party that precludes the judge from exercising fair judgment. The bias or prejudice alleged under § 144 must be grounded in extrajudicial sources, such as personal animus, rather than judicial actions that can be corrected on appeal. *Smith v. Danyo, 585* F.2d 83, 87 (3d Cir. 1978). Extrajudicial bias "refers to a bias that is not derived from the evidence or conduct of the parties that the judge observes in the course of the proceedings." *Johnson* v. *Trueblood,* 629 F.2d 287, 291 (3d Cir. 1980). The Court will also consider whether rceusal is necessary under 28 U.S.C. *§455(a),* which requires recusal if a judge's "impartiality might be reasonably questioned." The decision of whether to

recuse lies within the discretion of the trial judge. *U.S. v. Wilensky*, 757 F.2d *594*, 599-600 (3d Cir. 1985)

Ms. Yuhasz demands recusal based on her displeasure with this Court's Order of November 4. She contends that denying her motion to stay and request for a third adjournment "demeans [her] permanent handicap/disability and present medical conditions and reflects a favorable partiality towards all Defendants." (Yuhasz Aff. at 43). According to the Supreme Court, and the law of this Circuit, however, unfavorable rulings cannot form a basis for recusal. *SecuraComm Consulting, Inc. v.* Securacom *Inc.*, 224 F.3d 273, 278 (3d Cir. 2000); *Trueblood,* 629 F.2d at 291. According to the United States Supreme Court:

> It [§ 144] is a provision obviously not applicable save in those rare instances in which the affiant is able to state facts which tend to show not merely adverse rulings already made, which may be right or wrong, but facts and reasons which tend to show personal bias or prejudice. It was never intended to enable a discontented litigant to oust a judge because of adverse rulings made, for such rulings are reviewable otherwise, but to prevent his future action in the pending case.

Ex Parte American Steel Barrell Co., 230 U.S. 35, 43-44 (1913). Ms. Yuhasz's demand for recusal can be denied based on this precedent alone.

Moreover, these allegations do not evince extrajudicial bias, nor would they cause a reasonable person to question the Court's impartiality in presiding over this matter. The Court acquiesced to two requests by Ms. Yuhasz to adjourn the return date of the defendants' motions to dismiss in order to grant her more time to file an opposition. On each occasion, she requested only the next available

return date. She submitted medical verifications showing lasik eye surgery on September *24* and a stress test on October 12. Despite her medical situation, each extension granted by this Court was met with more filings unrelated to the motions to dismiss. For that reason, I concluded that the Court should proceed on the return date in accordance with the second extension granted to Ms. Yuhasz. Such a decision does not reflect any extrajudicial bias; rather, it was made in the interest of moving towards a resolution of the issues presented.

In addition, there is nothing about my denial of Ms. Yuhasz's motion to stay the complaint that suggests bias or impartiality. I ruled that Ms. Yuhasz's motion was premature; she was unable to present evidence of an actual pending grand jury investigation aside from the fact that she *requested a* federal grand jury. I also denied her request on substantive grounds. Ms. Yuhasz argued that the Court should stay the complaint because the defendants' ability to invoke their Fifth Amendment right against self-incrimination in the pending grand jury investigation would necessarily .terfere with her ability to take discovery in her civil complaint I found that no Defendant had invoked a Fifth Amendment right to deny Plaintiff meaningful discovery (in fact, discovery has not even commenced in this matter), and Plaintiff lacked standing to assert Fifth Amendment rights on behalf of Defendants. There is simply no evidence here of personal bias, prejudice or an appearance of impartiality.

Ms. Yuhasz also seeks my recusal due my alleged obstruction of justiee. Ms. Yuhasz's affidavit in support of recusal sets forth her efforts to initiate a federal grand jury investigation into the allegations of "illegal union takeover and monetary theft/extortion." (Yuhasz Aff. at 3, 8). Ms. Yuhasz filed a request with the U.S. Attorney's Office to intervene on her behalf in this ease, (Yuhasz Aff. at 9), and she received a letter from the U.S. Attorney dated November

2 declining her request. (Yuhasz Aff at 13-14). She then alleges in her affidavit that because this Court's Order denying her motion to stay and the U.S. Attorney's Office letter are so proximate in time, "it was glaringly clear to me that Judge Pisano contacted the U.S. Attorney's Office regarding my pending criminal complaint and request to appear before a Federal Grand Jury." (Yuhasz Aff. at 18). Ms. Yuhasz continues, "It is also clear that Judge Pisano used his position as a United States District Court Judge to persuade the U.S. Attorney's Office not to intervene on my behalf," (Yuhasz Aff. at 19) and "to speak derogatorily and maliciously to the U.S. Attorney's Office against me..." (Yuhasz Aff. at 20). She cites no evidence to support her conclusions.

These allegations are insufficient to require my recusal from the case. Although factual allegations in an affidavit for recusal must be accepted as true, conclusory statements and opinions need not be credited. *U.S. v. Vespe,* 868 F.2d 1328, 1340 (3d Cir. 1989). Affidavits are a vehicle to establish objective facts, not to set forth general and conclusory allegations. In fact, Ms. Yuha.sz's affidavit violates Local Civil Rule 7.2(a), which states:

> Affidavits shall be restricted to statements of fact within the personal knowledge of the affiant. Argument of the facts and the law shall not be contained in affidavits. Legal arguments and summations in affidavits will be disregarded by the Court and may subject the affiant to appropriate censure, sanctions or both.

See also Johnson v.Guhl, 91 F. Supp. 2d 754, 765 (D.N.J. 2000) (citations omitted) (ignoring all portions of attorney's affidavit asserting legal conclusions and considering matters only within the affiant's personal knowledge). Ms. Yuhasz's conclusory allegations are legally insufficient to require my

recusal under § 144 or §455(a). Disregarding such conclusions, there are no objective facts in her affidavit to suggest a personal judicial bias or appearance of impartiality.

III. CONCLUSION

For the reasons stated above, Ms. Yuhasz's § 144 affidavit is insufficient After carefull consideration of Ms. Yuhasz's request, there is nothing to suggest personal bias or prejudice, nor are there any facts from which my impartiality might be reasonably questioned. Just as a district judge has an obligation to recuse under the appropriate circumstances, there is an equal obligation not to recuse if there is no reason to do so. An appropriate Order accompanies this Opinion.

DATED: 16th of November, 2004

s/Joel A. Pisano
JOEL A. PISANO, U.S.D.J.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ,

Civil Action
No. 04-
1508(JAP)

Plaintiff,

-v-

OPINION

BRUCE D. LEDER, ESQ., et al.

Defendants.

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PISANO, District Judge:

Plaintiff Joanne Yuhasz ("Ms. Yuhasz" or "Plaintiff"), proceeding *pro se,* is before this Court in what is the latest in her series of lawsuits in state and federal court spanning the past decade. Currently before the Court are eleven motions to dismiss submitted on behalf of various defendants. For the following reasons, these motions are granted, and the case is dismissed, with prejudice.

I. BACKGROUND

Ms. Yuhasz has filed a 332-paragraph complaint alleging fifteen counts against forty-four named defendants.[1] The current suit encapsulates many of the claims Ms. Yuhasz has pursued since she first filed suit in New Jersey state court in 1995. Because of Ms. Yuhasz's *pro se* status, this Court has acted with diligence to make sense of her complaint and afford her the benefit of all reasonable interpretations. *Aiston v. Parker,* 363 F.3d 229, 234 (3d Cir. 2004).

Ms. Yuhasz is a former court reporter employed by the State of New Jersey, Administrative Office of the Courts ("AOC"). She appears to allege that she is a victim of unlawful retaliation - suffering an involuntary job transfer and then termination from her employment - as a result of grievances she filed "that exposed practices including, but not limited to, falsification of business records,

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[1] Forty-four represents names that appear in capital letters and bold type. There are numerous other individuals in small print beneath the bolded party names.

misappropriation of Court monetary funds and unlawful discriminatory employment practices." Complaint ¶ 73. In addition, Ms. Yuhasz claims to have uncovered a criminal enterprise resulting in an "illegal union takeover and monetary theft/extortion"[2] involving the New Jersey Judiciary and affiliated unions. Finally, there are numerous allegations of bias, collusion, obstruction of justice and denial of constitutional rights against various attorneys, law firms and judges with whom she has crossed paths.

The current complaint alleges violations of the First, Fifth, Seventh and Fourteenth Amendments of the United States Constitution (Counts I-II, XI), "obstruction of justice, conspiracy and concerted action to facilitate and conceal monetary thefts" (Count III), federal and state RICO (Counts IV and XII, respectively), the New Jersey Conscientious Employee Protection Act (CEPA) (Count V), breach of the duty of fair representation and bad faith (Count VI), breach of contract and fiduciary duty against the union defendants (Count VII, intentional and negligent infliction of emotional distress (Count VIII), tortious interference with prospective economic advantage (Count IX), and obstruction of justice (Count X). She also seeks injunctive relief against various state court judges who issued decisions on her state court claims (Counts XIII-XV).

II. STANDARD UNDER 12(b)(6)

Ms. Yuhasz "vehemently objects to this Court converting the instant 12(b)(6) motions into Rule 56 motions without notice to the Plaintiff and denying Plaintiff the right to be heard." Opposition to Att. Defs. at 1.[3] The Court has no intention of

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[2] *See* November 1, 2004, letter from Joanne Yuhasz to Judge Pisano

[3] Ms. Yuhasz submitted three separate opposition brief: one in opposition to the attorney defendants, one in opposition to PERC, and one in opposition to the CSRA/NJ and its individual representatives.

converting these motions to Rule 56 motions. The Court will consider the briefs, the oral arguments made by Defendants and Ms. Yuhasz on January 12, 2005, and the relevant state and federal court opinions that were attached as exhibits to numerous Certifications. *See Oshiver v. Leviii, Fishbein, Sedran & Berman,* 38 F.3d 1380, 1384 n.2 (3d Cir. 1994) (considering matters of public record, including orders from plaintiff's prior state court cases, when granting 12(b)(6) motion based on the entire controversy doctrine and *res judicata).*

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint "for failure to state a claim upon which relief can be granted." On a Rule l2(b)(6) motion, a court will, as it must, accept as true all of the factual allegations within the complaint and any reasonable inferences that may be drawn from those allegations. *Nami v. Fauver,* 82 F.3d 63, 65 (3d Cir. 1996). Claims will be dismissed under Rule 12(b)(6) only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957).

As stated above, Ms. Yuhasz presented the Court with a 332-paragraph complaint alleging fifteen counts against a great

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In each opposition, Ms. Yuhasz makes a request for leave to file an amended complaint. That request is denied. Ever mindful that leave to amend is ordinarily granted, *see* Fed. R. Civ. P. 15(a), the Court finds that any likely amendment will not cure the deficiencies plaguing the complaint. *See Foman v. Davis,* 371 U.S. 178, 182 (1962)(explaining that it is within the court's discretion to deny leave to amend for undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice to non-moving party or futility of amendment). This is Ms. Yuhasz's eigth complaint arising out of the circumstances of her employment. She is well-seasoned on the nature of her claims and the Court views this request to file an amended complaint as a veiled attempt to avoid disposition of this case.

number of defendants. She has a well-documented history of litigating these same claims, or variations of them, in federal and state court. She has a certain savvy when it comes to filing papers with the court; for example, making continued efforts to delay resolution of motions filed against her, serving the Court with a motion to recuse itself just one day after denying her third request for an adjournment of a return date, and filing for a writ of mandamus with Third Circuit Court of Appeals just one day after denial of the recusal motion. That knowledge can only take her so far. There are a variety of grounds on which this Complaint can be challenged. For instance, as Judge Debevoise of this Court pointed out in Ms. Yuhasz's prior federal court case, her complaint is far from compliant with Rule 8, which requires "a short and plain statement of the claim," and that every "averment of a pleading…be simple, concise and direct." Fed. R. Civ. P. 8(a) and (c). The Court, however, has invested a significant amount of time into examination of the pleadings in this case. Therefore, the Court will discuss in detail below the reasons why Plaintiff fails to state a claim under 12(b)(6).

III. DISCUSSION

This matter is greatly complicated by Ms. Yuhasz's overlapping and duplicative litigation history. She has spent nearly ten years in state and federal court litigating the same claims, against the same parties, but in different lawsuits. The record before this Court is cluttered with opinions and hearing transcripts from the New Jersey Superior Court, the appellate division, and the federal district court. Moreover, Ms. Yuhasz has combined each of her claims in this federal court action, but has asserted most of those claims against *all* defendants, despite there being no facts to connect certain defendants to certain claims. The case, therefore, is puzzling.

It also happens that this complaint is a replica of a 2003 complaint dismissed by Judge Debevoise. In fact, this suit was filed while that case was *still pending.* Therefore, it appears that Ms. Yuhasz's complaint would be precluded by the theory *of res judicata.* However, Ms. Yuhasz voluntarily dismissed numerous defendants from that action. The Court will therefore address those defendants individually. This is Ms. Yuhasz's eighth lawsuit arising out of her alleged illegal transfer and wrongful termination. Thus, the survival of Ms. Yuhasz's complaint at this stage is dependent upon theories of *res judicaia,* collateral estoppel and the Entire Controversy Doctrine, theories designed to safeguard the important principles of finality, efficiency and fairness in the judicial system. These principles are lost on Ms. Yuhasz. Rather than start from the chronological beginning of Ms. Yuhasz's history in the court system to determine if these principles apply, the Court need look no further than the suit before Judge Debevoise.[4]

A. The *Res Judicata* Effect of Plaintiff's Prior Federal Court Action

The instant complaint, filed on March 3 1, 2004, is identical to an earlier complaint filed in federal court on June 9, 2003, and amended in October 2003, styled *Yuhasz v.Chief Justice Deborah T. Poritz, et al.*, 03-02750.[5] Ms. Yuhasz simply added a new section naming Judge Debevoise as a defendant and accusing him of obstruction of justice for his role in disposing of 03-2750. Complaint ¶¶ 144-210. Chief

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[4] At oral argument on the eleven motions to dismiss, Ms. Yuhasz admitted that the only issue yet to be resolved by any court in her prior proceedings is her claim of an illegal union takeover. Her complaint, however, restates numerous claims that she has pled in the past and names numerous defendants who seemingly have nothing to do with an "illegal union takeover." We must deal with this complaint in its entirety.

[5] Ms. Yuhasz also filed in federal court in April 2003, *Yuhasz v. Hon. Ariel A. Rodriguez, et al.*, 03-1830. The Court signed a consent order dismissing the case without prejudice on November 6, 2003.

Judge Bissell dismissed Plaintiffs claims against Judge Debevoise as frivolous on April 19, 2004.

In that action, Judge Debevoise issued a number of Opinions and Orders disposing of the case. First, Judge Debevoise dismissed Ms. Yuhasz's complaint as against Defendants Christopher Carey, Esq., Andrew Kessler, Esq., and the firm of Hoagland, Longo, Moran, Dunst & Doukas, concluding that her claims were barred by the Entire Controversy Doctrine. *Yuhasz* V. *Chief Justice Deborah T. Poritz, et al.,* 03-02750, slip op. (D.N.J. Feb. 27, 2004). Judge Debevoise later dismissed the complaint on the same grounds as against defendant John Kennedy, Esq. and, presumably, his law firm, named by Ms. Yuhasz as O'Donnell, Kennedy, Vespole & Piechta and/or O'Donnell, Kennedy & Piechta. *Yuhasz v. chief Justice Deborah T. Poritz, eta!.,* 03-02750, slip op. (D.N.J. June 11, 2004). Finally, he dismissed Ms. Yuhasz's complaints against the AOC and twenty defendant judges on the following grounds: (1) failure to state a claim under Fed. R. Civ. P. 12(b)(6), (2) judicial immunity, and (3) lack of subject matter jurisdiction under the *Rooker-Feidman* doctrine. *Yuhasz v. Chief Justice Deborah T. Poritz, et al,* 03-02750, slip op. (D.N.J. April 12, 2004). Judge Debevoise further exercised his discretion and declined to accept supplemental jurisdiction over any of Ms. Yuhasz's state law claims.

While her case was pending before Judge Debevoise, she filed the instant complaint adding him as a defendant. This subsequent lawsuit fits squarely within the doctrine of *res judicata,* which prevents litigants from filing duplicative complaints that have already been decided. Specifically, *res judicata* will bar a claim that was adjudicated in an earlier lawsuit if (1) the judgment in the first action is valid, final and on the merits, (2) the parties in both actions are the same or in privity with each other, and (3) the claims in the second action arise out of the same transaction or occurrence as the

first action. *Cahn v. United States,* 269 F. Supp. 2d 537, 544 (D.N.J. 2003). Judge Debevoise dismissed the claims against Carey, Kessler and the Hoagland firm, Kennedy, the AOC and twenty defendant judges. The parties and claims are the same, and the prior decisions are valid and final. Furthermore, under Fed. R. Civ. P. 4 1(b), the dismissals operate "as an adjudication on the merits." **The** Accordingly, the complaint is dismissed as to the above defendants.[6]

B. Union Defendants

Ms. Yuhasz voluntarily dismissed numerous defendants from her prior federal court complaint, including: individual lawyers and their firms; the Certified Shorthand Reporters Association of New Jersey (CSRA/NJ) and its representatives; the Office & Professional Employees International Union, AFL-CIO Local 32 (OPEIU Local 32) and its representatives; the Public Employment Relations Commission (PERC); and the New Jersey Attorney General.

The crux of Ms. Yuhasz's claims against the Union Defendants appears to be their alleged mishandling of her employment grievances and their alleged role in altering a provision in the collective bargaining agreement that allowed for her unlawful, retaliatory transfer.

Ms. Yuhasz filed five lawsuits in state court that bear on her ability to file a valid complaint in this Court. She filed

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[6] The Court is aware that Ms. Yuhasz pursued an appeal of 03-2750. On November 18, 2004, the Third Circuit dismissed Ms. Yuhasz's appeal for lack of appellate jurisdiction, instructing her to obtain a final, appealable order(the court found that the case had not been resolved in the district court as to two defendants). On January 10, 2005, the Court terminated the remaining two defendants upon Ms. Yuhasz's request. The thirty day time limit to re-file a notice of appeal has expired. 28 U.S.C. §2107(a). Therefore, *res judicata* is appropriate. Regardless, the preclusive effect of a judgment is not defeated by an appeal, *Cyclops Corp. v. Fischback & Moore,* 71 F.R.D. 616, 618-19(W.D. Pa. 1976).

her initial claim in 1995 in New Jersey Superior Court following her alleged illegal job transfer. That complaint named the Judiciary, individual coworkers and supervisors, and the CSRA/NJ and OPEIU Local 32 ("the Union Defendants"), seeking damages for sexual harassment and retaliation under NJLAD, disparate treatment discrimination under NJLAD, violation of the New Jersey Constitution, breach of employment contract, breach of the collective bargaining agreement, violation of the covenant of good faith and fair dealing, and intentional infliction of emotional distress. MER-L-2514-95 ("2514-95"). Mercer County Superior Court Judge Paulette Sapp-Peterson dismissed, with prejudice, the majority of the claims in 2514-95 on substantive grounds, and dismissed the claims that arose under the New Jersey Employer/Employee Relations Act because they fell within the exclusive jurisdiction of PERC. The judge observed that PERC (now a defendant itself) had dismissed Ms. Yuhasz's unfair labor practices claim against the CSRA/NJ Defendants, and Ms. Yuhasz failed to prosecute her claims against OPEIU Local 32. The Appellate Division affirmed Judge Sapp-Peterson's dismissal of 2514. *Yuhasz v. Judicial)' of the* State *of* New *Jersey, et al.,* A-2591-00T1 (April 24, 2002).

In May 2000, after Ms. Yuhasz was tenuinated from her job, she initiated a suit for wrongful termination. MER-L-1623-00 ("1623-00"). The complaint named the state Judiciary, various employees and judges, and again alleged unlawful retaliation, age and gender discrimination, intentional violation of civil and constitutional rights, breach of contract, tortious interference with contractual rights and prospective economic advantage, violations of the Conscientious Employee Protection Act (CEPA), fraud and intentional infliction of emotional distress. Judge Sapp-Peterson dismissed the claims in 1623-00 on grounds of *res judicata,* collateral estoppel and statute of limitations, with the exception of Ms. Yuhasz's wrongful termination claim

against the Judiciary. The appellate division vacated the decision, finding the opinion unclear as to which claims were dismissed as to which defendants, and under which theories. *Yuhasz,* A-2591-00T1. The court noted, in particular, that *res judicaia* should not act as a bar to her new claims for tortious interference, violations of CEPA, defamation and fraud. The court took no position on whether any of her claims could survive a motion to dismiss. That case appears to be ongoing.

In April 2000, Ms. Yuhasz filed another complaint against the CSRA/NJ, OPEIU Local 32 and individual union officials. ESX-L-3281-00 ("3281-00"). She used the same set of facts and circumstances in her prior two complaints, but this time alleged breach of contract, misrepresentation and fraud, and intentional infliction of emotional distress. Also, as she did in her first two complaints, Ms. Yuhasz attempted to implicate the Union Defendants in her discrimination-based claims against the Judiciary, alleging that the Union Defendants colluded with the AOC to discriminate and retaliate against her. On January 18, 2002, the Honorable Theodore A. Winard, J.S.C., granted summary judgment on behalf of the CSRA/NJ and OPEIU Local 32 Defendants and dismissed all claims against them. The appellate division affirmed Judge Winard's ruling, *Yuhasz v. Stephen S. Weinstein, Esq., et al..*, A-3737-01T3, specifically pointing out that Ms. Yuhasz's claim against the Union Defendants for failure to block her transfer was without merit. Henninger Certification, Exhibit D at p.7.

On two occasions, the state appellate division affirmed the dismissal of Ms. Yuhasz's claims against the Union Defendants. Some of those claims are repeated here, namely Counts III, VI, VII and VIII. A federal court must apply state law when determining the preclusive effect of a state court judgment. *Rycoline Prods., Inc. v. C & W Unlimited,* 109 F.3d 883, 887 (3d Cir. 1981). New Jersey *res judicata* is governed by an analysis similar to that used by

federal courts: "(1) the judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one." *McNeil v. Legislative Apportioned Commission of the State of New Jersey,* 828 A.2d 840, *858-59* (N.J. 2003). Under this criteria, Counts III, VI, VII and VIII are barred by *res judicata.* For instance, Count III alleges obstruction of justice, conspiracy, and concerted action to facilitate and conceal monetary thefts. Ms. Yuhasz specifically relies on the allegations contained in 3281-00 to support Count III. But 3281-00 was dismissed on the merits and affirmed by the appellate division. Her claims for emotional distress, breach of contract, breach of fiduciary duty, and breach of the duty of fair representation were all decided against her in a similar fashion.

Using the same factual background, she has now added claims against these same defendants in the form of constitutional violations (Counts I, II and XI), obstruction of justice (Count X) and federal and state RICO violations (Counts IV and XII). Applying New Jersey law, as directed by 28 U.S.C. § 1738 (2004), any new claims brought by Ms. Yuhasz are barred by the New Jersey entire controversy doctrine.[7] *See Sutton v. Sutton,* 71 F. Supp. 2d 383, 390

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[7] For the Court to properly dismiss Ms. Yuhasz's claims under 12(b)(6) based on *res judicata* and the entire controversy doctrine, application of the doctrines must be "apparent on the face of the complaint.: *Rycoline Prods.,* 109 F.3d at 886-87. In Ms. Yuhasz's complaint, she makes specific reference to and specifically relies upon the factual allegations and claims in her prior state court complaints, thus implicating these preclusive doctrines.

A similar exception exists for the statute of limitations defense: if the face of the complaint clearly shows non-compliance with the relevant statute of limitations, it can be used to dismiss a complaint at the 12(b)(6) stage. *Oshiver,* 38 F.3d at 1384 n.1.

(D.N.J. 1999). The doctrine requires that a plaintiff assert in one action all related claims against a particular adversary that arise out of a particular transaction, or be precluded from bringing those claims in a subsequent action. *Melikian v. Corradetti,* 791 F.2d 274, 279 (3d Cir. 1986); *K-Land Corp. No. 28 v. Landis Sewerage Auth.,* 800 A.2d 861, 871 (N.J. 2002) (New Jersey's entire controversy doctrine promotes finality, party fairness, and judicial economy and efficiency). Two of her state court cases, 1623-00 and 3281-00, arose out of her 1999 discharge, and 2514 arose out of her illegal transfer in 1995. Any claims based on those transactions, and the same "core set of facts," are barred by the entire controversy doctrine.[8] *Nubenco Enter., Inc. v. Inversiones Barbera, S.A.,* 963 F. Supp. 353, 364 (D.N.J. 1997). Accordingly, Ms. Yuhasz is not permitted to continuously fabricate new causes of action against these defendants.

Moreover, the above claims fail on their merits. The Union Defendants are not state actors, so Ms. Yuhasz is not entitled to relief for alleged constitutional violations. *Groman v. Twp. of Manalapan,* 47 F.3d 628, 638 (3d Cir. 1995). In addition, accepting her allegations as true, Ms. Yuhasz fails to state a cause of action under the RICO statutes. A violation of 18 U.S.C. § 1962(c) requires (1) conduct, (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Sedima v. Imrex Co.,* 473 U.S. 479, 495 (1985). The complaint fails to allege a pattern of "racketeering activity" within the meaning of the statute. Furthermore, there are no allegations against the Union Defendants to support a claim for obstruction of justice.

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[8] One commentator suggests that "a federal court will only apply the entire controversy doctrine to bar claims that were or could have been litigated in New Jersey state court action." Bartkus, N.J. Federal Civil Procedure, §19-3:7, at 167 (Supp. 2002). Here, Ms. Yuhasz's unresolved claims could have been litigated in her prior state court actions, as state courts have concurrent jurisdiction over constitutional claims brought under 42 U.S.C. § 1983 and civil RICO claims. *Sutton,* Supp. 2d at 391 n.3.

The last remaining claims against the Union Defendants are those set forth in 1623-00, the case in which the appellate division vacated Judge Sapp-Peterson's dismissal. The complaint contained allegations of fraud, tortious interference with prospective economic advantage (Count IX in this Complaint), intentional and negligent infliction of emotional distress (Count VIII in this Complaint), and violations of CEPA (Count V in this Complaint). Ms. Yuhasz refers to 1623-00 as her "whistleblower" complaint. She alleges she was constructively discharged in retaliation for disclosing unlawful practices, Complaint ¶ 256, namely the "illegal alteration of Article VII of the CBA between the State of New Jersey AOC and the labor union…Opposition to Alt Defs. at 19-20.[9] Discovery in the state court case appears to be ongoing. The general rule, however, is that the pendency of an action in state court does not bar proceedings regarding the same matter in a federal court of competent jurisdiction. *Marshall v. Lauriault,* 372 F.3d 175, 183 (3d Cir. 2004).

The Union Defendants appropriately argue that the Plaintiff cannot maintain a claim for retaliation under CEPA. CEPA was designed to protect employees from suffering adverse consequences for "blowing the whistle" on unlawful employment practices. It follows, therefore, that actions under CEPA may only be maintained against an *employer.* Accordingly, the Plaintiff does not have a cause of action against the unions. In addition, claims brought under CEPA are subject to a one-year statute of limitations, N.J.S.A 34:19-5, which begins to run on the date of the actual demotion, suspension, or termination of employment. *Villalohos v. Fava,* 775 A.2d 700 (N.J. Super. Ct. App. Div. 2001), *certif denied,* 785 A.2d 438. Plaintiff alleges she was informed of her termination by letter dated December 9, 1999. Complaint

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[9] Ms. Yuhasz makes similar statements in her Opposition to PERC's motion a pages 11-12.

¶ 80. Therefore, the statute of limitations for a CEPA claim lapsed in December 2000. She filed this complaint in 2004.

Normally the CEPA waiver provision would bar additional claims that arise out of a plaintiff's retaliatory discharge, such as intentional infliction of emotional distress.[10] *Lynch v. New Deal Delivery Service, Inc.*, 974 F. Supp. 441 (D.N.J. 1997). However, because these claims are asserted against the Union Defendants, who did not employ her, the claims should be examined independently of the CEPA claim.

Ms. Yuhasz's claims of intentional and negligent infliction of emotional distress and tortious interference are both without merit, and the emotional distress claims are barred by the relevant two-year statute of limitations. N.J.S.A. 2A: 14-2. Treating her complaint liberally, and finding that the emotional distress claims arose, at the latest, out of her discharge in December of 1999 or, confusingly, her March 2000 "compulsory retirement" (Complaint at 83), there is no doubt from the face of her complaint that her 2004 complaint is time-barred. *Gambrel! v. Hess*, 777 F. Supp. 375, 382 (D.N.J. 1991). In addition, the Court finds these claims frivolous. Ms. Yuhasz does not provide any allegations that support causes of action for negligent or intentional infliction of emotional distress or tortious interference with prospective economic advantage. Ms. Yuhasz's opposition is typical of her legally insufficient filings. She argues that "all Defendants admit that they intentionally and maliciously interfered with Plaintiffs

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[10] The CEPA statute contains a waiver provision which states that institution of a claim bars any claims "under any other contract, collective bargaining agreement, State law, rule or regulation or under the common law." N.J.S.A. 34:19-8. Therefore, her claims for tortuous interference, emotional distress and fraud (and, perhaps her RICO claims) that emerged from her alleged unlawful retaliatory discharge are precluded by statute.

contractual relationship by his active participation under a RICO conspiracy theory to conceal the CBA fraud and monetary theft/embezzlement." Opposition to Att. Defs. at 3 8-39. There is no indication that any of the defendants have admitted any of her allegations, there is no specificity as to any particular defendants, and she fails to allege that she has suffered any particular form of stress caused by extreme and outrageous conduct or negligent acts. See *Yost v. General Motors,* 651 F. Supp. 656, *657* (D.N.J. 1986) ("conclusory allegations, unsupported by facts, cannot withstand a motion to dismiss").

Based on the foregoing, all claims against the CSRA/NJ, Susan Scardilli, Edward Zajkowski, OPEIU Local 32, Patrick Tully and Lois Cuccinello are dismissed.

C. The Attorney Defendants

The remaining attorney defendants are Stephen Weinstein, Esq., and his firm Stephen S. Weinstein, P.C. (the Weinstein Defendants); Bruce Leder, Esq., and the firm of Schneider, Goldberger, Cohen, Finn, Solomon, Leder & Montalbano, P.C. (the Leder Defendants); Joel Selikoff, Esq., Michael Damm, Esq., and Selikoff & Cohen, P.C. (the Selikoff Defendants); Bruce Seidman, Esq. and DeVeaux & Seidman, P.C. (the Seidman Defendants); Robert Henninger, Esq., and Spear, Wilderman, Borish, Endy, Spear & Runckel (the Henninger Defendants); Keith McKenna, Esq., Anthony Ambrosio, Esq., and Ambrosio, Kyreakakis, DiLorenzo Moraff& McKenna (the McKenna Defendants); William Courtney, Esq.; and the law firm of Tompkins, McGuire, Wachenfeld & Bariy, LLP (the Tompkins firm).

In May 1996 Plaintiff filed a legal malpractice claim against the Weinstein, Leder and Selikoff Defendants. MRS-L-1452-96, now docketed as ESX-L-5833-99 ("5833-99"). The Weinstein Defendants served as counsel on behalf of Ms.

Yuhasz with respect to grievances filed in 1991, and the Leder Defendants handled her grievances from 1992-1995. Ms. Yuhasz hired the Selikoff Defendants to represent her in 2514-95, the 1995 discrimination suit. 5833-99 included claims for legal malpractice, breach of contract, negligent misrepresentation, breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing. The action was dismissed on the merits by orders of the Honorable Philip Freedman, J.S.C., on April 5, 2000 and the Honorable Donald Goldman, J.S.C., on November 9, 2000.

In April 2000, Ms. Yuhasz filed a complaint that mirrored 5833-99, for legal malpractice, against the same defendants, but added the McKenna Defendants, who represented her in 5833-99 and in certain administrative matters before PERC. ESX-L-3281-00 ("3281-00"). Plaintiff also included the Union Defendants, CSRA/NJ, OPEIU Local 32 and individual union officials for mishandling her grievances and for other misconduct. (Ms. Yuhasz had voluntarily dismissed those parties from 5833-99). Plaintiff also named William Courtney, Esq., but for discovery purposes only, as permitted by New Jersey Court Rule 4:11-3. Courtney represented Ms. Yuhasz in matters before PERC in 1995. The case was dismissed through various orders from multiple state court judges. The Appellate Division affirmed, *Yuhasz v. Stephen S. Weinstein, Esq., et al.*, A-3737-0 1 T3.

In April 1999, Ms. Yuhasz initiated another suit against *defense counsel* for the Weinstein, Selikoff and Leder Defendants in 5833-99, including Joseph Reardon, III, Esq., of O'Donnell, Kennedy, Vespole & Piechta, Andrew Kessler, Esq., of the Hoagland firm, and Christopher Carey, Esq., then of the Tompkins firm. MRS-L-845-99, now docketed as ESX-L 3975-99 ("3975-99"). The complaint also named two Morris County judges involved in 5833- 99. By Orders dated June 11, 1999 and October 8, 1999, the Honorable Theodore

A. Winard, J.S.C., granted motions to dismiss this case with prejudice.

Ms. Yuhasz names in this suit all of the aforementioned attorneys. However, there are no allegations of legal malpractice. Instead, she attempts to draw the attorney defendants into her alleged conspiracy by virtue of their involvement in prior suits. This she cannot do. Insofar as there is a random overlap of some claims asserted in prior cases that are gratuitously repeated here, such as breach of contract and fiduciary duty, those claims are clearly precluded by *res judicata. McNeil,* 828 A.2d at 858-59. As for her attempt to implicate the attorney defendants in a RICO conspiracy and other claims related to her employment, not only are those claims frivolous based on the lack of any factual nexus between the claims and attorneys' representation, but insofar as they can be construed as new claims arising out of their representation, they are barred by the entire controversy doctrine. *Sutton,* 71 F. Supp. 2d at 390, 392-93.[11]

There are other attorney defendants who were not named in a prior state court suit. The Seidman Defendants were added in the federal court actions for their role as defense counsel on behalf of the CSRA/NJ in 3281-00. Likewise, the Henninger Defendants served as defense counsel to OPEIU Local 32 in 3281-00. Courtney was named for discovery purposes in 3281-00 but appears as a named defendant in this case. But there are no factual averments in this complaint that relate to these defendants or their roles in

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[11] It bears noting that Defendant McKenna appeared on behalf of himself, and he is apparently no longer associated with Defendants Ambrosio and the law firm of Ambrosio, Kyreakakis, DiLorenzo, Moraff & McKenna. Ambrosio and his firm have not appeared in this suit. Nonetheless, for all the reasons expressed above, the case is also dismissed as to them. The Court can, *sua sponte,* raise *res judicata* for either public policy reasons or in the interests of justice. *Salahuddin v. Jones,* 922 F.2d 447, 449 (2d Cir. 1993); *McNeil,* 177 N.J. at 399.

causing her injuries. The Seidman and Henninger defendants' only participation was the successful representation of the Union Defendants in 3281-00. And Courtney's involvement appears limited to three unfair practice charges filed on Ms. Yuhasz's behalf before PERC in 1995. Opposition to Att. Defs. at 13. The only allegations remotely concerning these defendants are asserted in Ms. Yuhasz's opposition, in which she states that all counsel, including her own, "were aware of all the facts and circumstances surrounding the illegal union takeover and participated in concealing and facilitating it." Opposition to Att. Defs. at 27.

Those allegations do not appear in the complaint and bear no relation to her causes of action. Counts VI and VII involve the unions breaching their obligations to Ms. Yuhasz - those are not pled as to the other defendants. Count III deals with conspiracy to facilitate and conceal monetary theft, which has no relation to an "illegal union takeover." And the RICO counts similarly seem to relate to some sort of monetary theft. There is simply nothing related to an illegal union takeover. Because the complaint does not make any allegations supporting any claims against the above-mentioned defendant, all counts must be dismissed for failure to state a claim upon which relief can be granted.

In a further attempt to clarify, the Court points out that the "illegal union takeover" has been a prevalent theme in her correspondence involving this case. If that is, in fact, the whole crux of this lawsuit, then Ms. Yuhasz has completely misdirected the parties and this Court. After further examination of her Appendix, and after going to great lengths to determine the basis for this claim, it appears that Ms. Yuhasz is trying to revive her complaints dating back to 1995 when she was transferred. She complained that the transfer clause and grievance procedure of her collective bargaining agreement were unlawfully altered. In addition, Ms. Yuhasz, along with fellow court reporters, complained

about the affiliation agreement between the CSRA/NJ and OPEIU Local 32, arguing that the court reporters never voted Local 32 to act as its collective bargaining representative. Yuhasz Certification, Exhibits 14-19. These events appear to be the factual basis for her contention of an "illegal union takeover." They are only referenced in her complaint at Paragraph 78. She states that the Seidman and Henninger Defendants admitted the illegal union takeover while defending their clients in 3281-00. That case, however, was dismissed by various state court orders.

Ms. Yuhasz not only tries to revive that claim, based on events in 1995, but she also believes that every judge and attorney she has encountered since then, including her own, have been involved in an ongoing conspiracy to cover up those unlawful events. Such a position is frivolous. Moreover, Ms. Yuhasz has been turned away by the courts on numerous occasions concerning these claims,[12] and adding new defendants at this late date does not allow her to resuscitate her case.

D. The Attorney General and Public Employment Relations Commission (PERC)

Ms. Yuhasz similarly attempts to implicate PERC and the state Attorney General in this ongoing conspiracy. Her complaint, however, only alleges that PERC hearing examiners violated orders of the Commission, Complaint ¶77, and that Judge Debevoise's adjudication of 03-2750 was biased against her, in part, because attorney general Harvey was one of the judge's former law clerks. Complaint ¶¶ 151-52, 184-85. Though her complaint is obviously devoid of any allegations sufficient to state a claim for relief, Ms. Yuhasz's

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[12] Judge Winard ruled that the allegations of a fraudulent altering of the collective bargaining agreement was "an issue without any merit." Henninger Certification, Exhibit H at 24.

opposition sheds further light on the nature of her claims. She appears to claim that PERC, the state agency that presided over her unfair practice claims, and the Office of the Attorney General, who represented the Judiciary Defendants in matters before PERC, joined the "CBA fraud and monetary theft" conspiracy through their handling and disposition of her claims. PERC allegedly retaliated against her by issuing adverse decisions, it denied her due process rights by refusing her a hearing she requested, and the Attorney General interfered, threatened and tampered with her witnesses. Opposition to PERC at 15-16. To connect PERC and the attorney general's office to her conspiracy theory by virtue of their roles in her unfair practices claims in 1995 is simply frivolous. Her complaint as against these parties lacks any basis in fact or in law.

Also, Plaintiff's claims against these parties are barred by the Eleventh Amendment. The Eleventh Amendment prohibits suits brought by private citizens against states or their agencies in federal court, absent that state's consent to suit or waiver of the immunity by Congress. *Seminole Tribe of Florida v. Florida,* 517 U.S. 44, 54 (1996); *Jordan v. New Jersey Dep't of Corrections,* 881 F. Supp. 947, 951 (D.N.J. 1995) ("absent a clear waiver by a state of its sovereign immunity...or a congressional abrogation of that immunity, a federal court lacks jurisdiction to hear claims brought by an individual against a state"). The Eleventh Amendment applies regardless of the relief sought, *Pennhurst State Schooland Hosp. v.Halderman,* 465 U.S. 89, 100 (1984), and has been expressly extended to suits brought under 42 U.S.C. § 1983. *Will v. Mich. Dep't of State Police,* 491 U.S. 58, 64 (1989). Moreover, Eleventh Amendment sovereign immunity "encompasses not only actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities." *Regents of the Univ. of Cal. v. Doe,* 519 U.S. 425, 429 (1997). PERC is an instrumentality of the state, N.J.S.A.

34:13A-2, 5.1, and therefore enjoys Eleventh Amendment immunity. The office of the attorney general enjoys similar immunity.

The action against attorney general Harvey, in his individual capacity, is also dismissed for failure to state a claim upon which relief can be granted. Ms. Yuhasz advances no allegations against Harvey in his individual capacity. Mr. Harvey's prior association with Judge Debevoise is simply irrelevant in establishing any entitlement to relief against him.[13]

Finally, any claims against PERC and the office of the attorney general - which date back to the handling and disposition of her unfair labor practices in or around 1995 - would certainly be barred by the relevant statute of limitations.

IV. CONCLUSION

The Court has encountered great difficulty in sorting through Ms. Yuhasz's complaint and her various filings. What has become clear is that Ms. Yuhasz views herself as a victim of discriminatory and harassing treatment in the work place, a retaliatory job transfer, and a retaliatory discharge. However, the latest of those events took place over four years ago, and this is Ms. Yuhasz's eighth lawsuit in what has become a repetitive and fruitless effort. For all of the foregoing reasons, Ms. Yuhasz's complaint is dismissed, with

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[13] The action against attorney general Harvey would also be subject to the Eleventh Amendment. State officials named in their official capacity, as attorney general Harvey is here, are entitled to immunity. *Kentucky v. Graham*, 473 U.S. 159, 169 (1985). There is an exception when a plaintiff sues a state official alleging a violation of federal law and seeks prospective injunctive relief. *Pennhurst*, 465 U.S. at 102-03. The only injunctive relief Ms. Yuhasz seeks is relief from prior judgments issued against her by certain state court judges (Counts XIII-XV). Those claims were disposed of by Judge Debevoise.

prejudice. An appropriate Order follows. Also following this opinion is an Order to Show Cause why the Court should not issue an injunction preventing Ms. Yuhasz from filing future complaints based on the same matters that are the subject matter of the present suit, without first seeking leave of Court.

s/Joel A. Pisano

Dated: February 18, 2005 JOEL A. PISANO, U.S.D.J.

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NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ,

Civil Action No.
04-1508(JAP)

Plaintiff,

-v-

OPINION

BRUCE D. LEDER, ESQ., et al.

Defendants.

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PISANO, District Judge:

Before the Court is a motion for a bar order, filed by several defendants in this case, requesting the Court to enjoin pro se Plaintiff, Joanne Yuhasz ("Plaintiff"), from future court filings without first seeking permission from the Court. The defendants ask the Court to restrain Ms. Yuhasz from her practice of filing repetitive and frivolous lawsuits. For the reasons that follow, the defendants' motion is GRANTED.

I. FACTS AND PROCEDURAL HISTORY

Ms. Yuhasz is a former court reporter employed by the State of New Jersey, Administrative Office of the Courts ("AOC"). She alleges that she is a victim of unlawful retaliation - suffering an involuntary job transfer and then termination from her employment - as a result of grievances she filed "that exposed practices including, but not limited to, falsification of business records, misappropriation of Court monetary funds and unlawful discriminatory employment practices." Yuhasz Complaint, ¶ 73. Ms. Yuhasz also claims

to have uncovered a criminal enterprise resulting in an "illegal union takeover and monetary theft/extortion"[1] involving her employer and the unions that represented the court reporters. Plaintiff includes numerous allegations of bias, collusion, obstruction of justice and denial of constitutional rights against various attorneys, law firms and judges with whom she has crossed paths while litigating these claims. Plaintiff mentions numerous instances of legal malpractice, though those claims are not pursued here. Finally, Ms. Yuhasz believes that all of these defendants are engaged in a vast conspiracy to deny her justice. The result is a confusing and lengthy fifteen-count complaint naming more than fifty defendants.

A. Litigation History

This is Plaintiff's eighth lawsuit arising out of her employment as a court reporter; she filed the first in 1995 after her alleged illegal job transfer. She has since embarked on a decade- long journey of litigation in state and federal court involving the same or substantially similar claims, against the same or substantially related parties. With each passing lawsuit, Ms. Yuhasz accumulates more claims, and this most recent complaint appears to encapsulate many, if not all, of the claims that have been decided against her. She filed this complaint while a 2003 complaint was still pending in this very district before Judge Debevoise. The two complaints are the same, save for the addition of Judge Debevoise as a defendant.

She filed her initial claim in 1995 in New Jersey Superior Court following her alleged illegal job transfer. That

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[1] *See November 1, 2004 letter from Joanne Yuhasz to Judge Pisano.*

complaint named the Judiciary, individual co-workers and supervisors, and the CSRA/NJ and OPEIU Local 32 ("the Union Defendants"), seeking damages for sexual harassment and retaliation under NJLAD, disparate treatment discrimination under NJLAD, violation of the New Jersey Constitution, breach of employment contract, breach of the collective bargaining agreement, violation of the covenant of good faith and fair dealing, and intentional infliction of emotional distress. MER-L-2514-95 ("2514-95"). A Mercer County Superior Court Judge dismissed, with prejudice, the majority of the claims on substantive grounds, and dismissed the remaining claims because they fell within the exclusive jurisdiction of the Pennsylvania Employment Relations Commission ("PERC"). The Appellate Division affirmed dismissal of 2514-95. *Yuhasz v. Judiciary of the State of New Jersey, et al.*, A-2591 -00T 1 (April 24, 2002).

Yuhasz initiated a suit for wrongful termination in May 2000, after she was terminated from her job in late 1999. MER-L-1623-00 ("1623-00"). The complaint named the state Judiciary, various employees and judges, and again alleged unlawful retaliation, age and gender discrimination, intentional violation of civil and constitutional rights, breach of contract, tortious interference with contractual rights and prospective economic advantage, violations of the Conscientious Employee Protection Act (CEPA), fraud and intentional infliction of emotional distress. The claims were dismissed on grounds of *res judicata,* collateral estoppel and statute of limitations, with the exception of Yuhasz's wrongful termination claim against the Judiciary. The appellate division vacated the decision, finding the opinion unclear as to which claims were dismissed as to which defendants, and under which theories. *Yuhasz,* A-2591-00T1. The appellate division did not opine on the merits of

plaintiffs claims. That case, now venued in the Burlington Vicinage under docket number BUR-L-1778-04, remains pending and is at the discovery stage.

In May 1996 Plaintiff filed a legal malpractice claim against certain attorney defendants who represented her with respect to grievances filed in 1991 (the Weinstein Defendants), 1992- 1995 (the Leder Defendants), and with respect to 2514-95, the 1995 discrimination suit (the Selikoff Defendants). MRS-L-1452-96, now docketed as ESX-L-5833-99 ("5833-99"). 5833- 99 included claims for legal malpractice, breach of contract, negligent misrepresentation, breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing. The action was dismissed on the merits by orders dated April 5, 2000 and November 9, 2000. Plaintiff argued that she defeated all those motions to dismiss but, as expected, has failed to provide the Court with any such orders.

In April 1999, Yuhasz initiated suit against *defense counsel* for the attorney defendants in 5833-99. MRS-L-845-99, now docketed as ESX-L-3975-99 ("3975-99"). The complaint also named two Morris County judges involved in 5833-99. The case was dismissed, with prejudice, by Orders dated June 11, 1999 and October 8, 1999.

In April 2000, Yuhasz filed another complaint against the Union Defendants for mishandling her grievances and committing other misconduct. ESX-L-3281-00 ("3281-00"). Using the same set of facts and circumstances in her prior two complaints, Plaintiff alleged breach of contract, misrepresentation and fraud, and intentional infliction of emotional distress. Also, as she did in 2514-95 and 1623-00, Yuhasz attempted to implicate the Union Defendants in her

discrimination claims, alleging collusion with the AOC to discriminate and retaliate against her. The April 2000 complaint also mirrored 5833-99, alleging legal malpractice against the same attorney defendants, but she added *her own attorneys* from 5833-99 (who also represented her in certain administrative matters before PERC). All claims against the union defendants were dismissed on summary judgment on January 18, 2002. The claims were dismissed against the attorney defendants through various orders from multiple state court judges. The appellate division affirmed, *Yuhasz v. Stephen S. Weinstein, Esq.et al.,* A-3737-01T3.

After five state lawsuits, Plaintiff turned to the federal courts. She filed her first federal lawsuit in April 2003, *Yuhasz v. Hon. Ariel A. Rodriguez,et al.,* 03-1830. The Court signed a consent order dismissing the case without prejudice on November 6. Before securing that dismissal, Plaintiff had already filed a new complaint, on June 9, 2003 (amended in October 2003), styled *Yuhasz v. Chief Justice Deborah T. Poritz, et al.,* 03-02750. Judge Debevoise dismissed the complaint against certain attorney defendants based on the Entire Controversy Doctrine (via Opinions and Orders dated in February and June of 2004), and dismissed Yuhasz's complaints against the AOC and twenty defendant judges for failure to state a claim under Fed. R. Civ. P. 12(b)(6), judicial immunity, and lack of subject matter jurisdiction under the *RookerFeldman* doctrine (by Opinion and Order in April 2004). Plaintiff secured another voluntary dismissal of the union and remaining attorney defendants. The Third Circuit dismissed Yuhasz's appeal for lack of jurisdiction, instructing her to obtain a final, appealable order (the court found that the case had not been resolved in the district court as to two defendants). On January 10, *2005,* the Court terminated the remaining two defendants upon Yuhasz's request. The thirty

day time limit to re-file a notice of appeal has expired. 28 U.S.C. §2107(a).

While the motions to dismiss *were still pending* in 03-2750, Plaintiff initiated this lawsuit, bringing us to the present.

B. Litigation of Present Action

The events of this latest case provide further insight into Plaintiff as a litigator. After the complaint was filed, the defendants filed motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and included a request for a bar order to enjoin Yuhasz from future filings without first seeking leave of court. The Court adjourned the return date on the defense motions because recent eye surgery made it difficult for her Plaintiff concentrate and work on the computer. Despite Plaintiff's eye troubles that necessitated the adjournment, that very week she filed a Motion to Stay the Complaint and All Dispositive Motions Pending Resolution of Grand Jury Investigation. By October 20, 2004, more defense motions had been filed, and the Court granted Yuhasz another adjournment due to her poor health. The very day the Court granted the second adjournment, however, Plaintiff sent the Court letters challenging one defense motion as time-barred and another because the attorney did not comply with the rules for formal motion practice, and Plaintiff filed a Request to Enter Default against thirteen defendants. On October 29, the Court received a Motion to Enter Default Against Certain Defendants, For Partial Summary Judgment On Liability Against Defaulting Defendants, and For Trial By Jury Against Defaulting Defendants To Assess Monetary Damages On Behalf Of Plaintiff. There was no indication that the Clerk had entered default. Yuhasz filed a third

adjournment request on the motions to dismiss on November 1.

On November 4, the Court filed an Order denying Plaintiff's motion to stay and her request for a third adjournment. Plaintiff had sought a stay pending the resolution of a grand jury investigation, but the Court found no evidence that a grand jury investigation existed, and ruled that Plaintiff did not have standing to assert the Fifth Amendment privilege against self- incrimination on behalf of the defendants who were allegedly named in the grand jury investigation. The Court denied the third adjournment request because it became obvious from Plaintiff's various filings that her medical condition did not preclude her from participating in the case, contrary to her representations to the Court.

On November 5, the day after the Court entered its order, Yuhasz filed an Affidavit seeking recusal pursuant to 28 U.S.C. § 144. Also, on November 8, she requested a forty-five day leave to file an amended complaint. The Court filed an Opinion on November 16 denying Plaintiff's motion to recuse because (1) such a motion cannot be based on unfavorable decisions, alone, (2) the Court's prior decisions did not reflect bias or prejudice, and (3) Plaintiff's assertions regarding obstruction of justice were frivolous. *Yuhasz v. Leder et al.*, 04-1508, slip op. (D.N.J. Nov. 18, 2004). The same day on which the Opinion and Order were filed on the docket, and presumably before Plaintiff was even aware of the decision, she filed an application for a Writ of Mandamus with the Third Circuit requesting the Court of Appeals to order my recusal. The Third Circuit denied that request on December 21.

The Court held oral argument on the motions to dismiss on January 12, 2005, and by Opinion and Order dated February 18, the Court granted the motions and dismissed Plaintiff's claims. *Yuhasz v. Leder, et al.*, 04-1508, slip op. (D.N.J. Feb. 18, 2005). The Court also issued an Order to Show Cause as to why Plaintiff should not be enjoined from future filings without first seeking leave of court. Oral argument was set for April 12, and the parties were provided with a briefing schedule. By letter of April 8, Plaintiff waived oral argument, and thus relies on her opposition papers. The Court has also received some reply letters from certain defendants, and will consider those submissions that were filed in accordance with the briefing schedule.

II. DISCUSSION

A. Jurisdiction

Plaintiff filed a notice of appeal on March 11, 2005, challenging the February 18 Opinion and Order granting the defendants' motions to dismiss. A district court, while normally divested of jurisdiction over a case when an appeal is taken, nonetheless retains jurisdiction over certain matters. *Venen* v. *Hon. Charles Sweet*, 758 F.2d 117, 121 n.2 (3d Cir. 1985). For instance, a district court may issue orders modifying, restoring or granting an injunction. *Id.* (citing Fed. R. App. P. 8). Since the defendants seek injunctive relief, the Court properly retains jurisdiction to rule on this mailer.

B. Legal Standard

Numerous defendants filed motions seeking to enjoin the Plaintiff from filing future lawsuits against them without seeking leave of court. The All Writs Act, 28 U.S.C. § 1651, enables district courts to issue injunctions precluding a

litigant from continuing to file abusive, groundless and vexatious litigation, *Brow v. Farrelly,* 994 F.2d 1027, 1038 (3d Cir. 1993), and meritless actions "where the pleadings raise issues identical or similar to those that have already been adjudicated." *Matter of PackerAve. Assocs.,* 884 F.2d 745, 747 (3d Cir. 1989); *In re Oliver,* 682 F.2d 443 (3d Cir. 1982). An injunction is particularly appropriate under the above circumstances when the litigant has engaged in a "pattern of conduct from which [the Court] can only conclude that a litigant is intentionally abusing the judicial process and will continue to do so unless restrained." *Abdul-Akbar v. Watson,* 901 F.2d 329, 333 (3d Cir. 1990).

The Court's power in this regard is limited, however, by a litigant's fundamental rights to due process and access to the courts. *Brow,* 994 F.2d at 1038; *Matter of Packer Ave. Assocs.,* 884 F.2d at 747 ("such injunctions are extreme remedies and should be...sparingly used"). To achieve this delicate balance, the Third Circuit requires that:

> [T]he District Court should not restrict a litigant from filing claims absent exigent circumstances, such as a litigant's continuous abuse of the judicial process by filing meritless and repetitive actions. If the circumstances warrant the imposition of an injunction, the District Court must give notice to litigant to show cause why the proposed injunctive relief should not issue...Likewise, the scope of the injunctive order must be narrowly tailored to fit the particular circumstances of the case before the District Court.

Id. (internal citations omitted).

C. A Bar Order is Appropriate

Only on rare occasions is the Court compelled to place restraints upon a citizen's broad right of access to our nation's judicial system. The laborious task of reconciling Plaintiff's litigation history involving her employment with the New Jersey Administrative Office of the Courts reveals that this is an appropriate case for such restraints. Although Plaintiff experienced two separate employment-related events leading to two separate suits - her alleged retaliatory transfer in 1995 and alleged wrongful termination in 1999 - she has managed to file eight separate actions in all. At least five suits name her union representatives, four name her employer, five name various attorneys she has encountered while litigating her claims, and on three occasions she has included as defendants in her suit the judges who rendered adverse decisions against her. Drawing from the various state court opinions and transcripts, Judge Debevoise's opinions, and from this Court's own dealings with Ms. Yuhasz, there is little doubt that she will stop filing either the same or slightly different versions of her claims until she receives the desired result. *Abdul-Akbar,* 901 F.2d at 333.

Yuhasz has employed elusive tactics when presented with dispositive motions throughout the past decade, responding with motions to amend her complaint, taking voluntary dismissals and re-filing a new complaint, requesting repeated adjournments based on physical disability (though filing numerous documents during the adjournments), complaining that she was denied discovery (when in fact, she never asked for it), filing motions for recusal, requesting extraordinary writs of mandamus from the Third Circuit and, most importantly, filing new lawsuits. In her opposition papers to this motion, Yuhasz only reminds

the Court that one of her cases in state court remains active, as if to validate her behavior. She also attaches an "Affidavit of Merit" in support of a previous malpractice claim, seemingly impervious to the fact that the case has been dismissed for some time.

This behavior goes beyond the bounds of mere litigiousness. *In re Oliver,* 682 F.2d at 446. Yuhasz is not an unknowing pro se Plaintiff; rather, she has evidenced working knowledge of civil trial practice and general judicial procedure, and she cannot exploit her pro se status to mask her continued manipulation of the judicial process. *See Farguson v. MBank Houston N.A.,* 808 F.2d *358,* 359 (5th Cir. 1986) (pro se status is not an "impenetrable shield, for one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets").

The Court is not a stranger to these types of circumstances, however seldom they may arise. In *Ganibrell v. Hess,* 777 F. Supp. *375* (D.N.J. 1991) *a/f'd,* 970 F.2d 898 (3d Cir.) *cert. denied,* 506 U.S. *895* (1992), a pro se plaintiff filed six actions related to either her Title VII claim, based on racial discrimination and wrongful termination, or the dismissal of that Title VII action. The plaintiff also sought to have the Title VU claim reinstated on two occasions. *Id.* at 383. The plaintiff sued several defendants numerous times, including judges who ruled against her. *Id.* Each case was dismissed, with prejudice, but she continued to file complaints, and indicated she had no intention of stopping. *Id.* at 383-84. The Court found an injunction appropriate to put an end to "a history of meritless litigation pertaining to the dismissal of her Title VII action." *Id.* at 384.

In *Chipps v. United States Dist.Court of the Middle Dist. of Pa.*, 882 F.2d 72, 73 (3d Cir. 1989), the plaintiff filed four lawsuits concerning his obligation to repay a student loan. The fourth suit named the district court and one of its judges, and the court of appeals and one of its judges. *Id.* The district judge dismissed the suit as repetitious of his other suits and an improper way to challenge prior adverse judicial rulings. *Id.* The judge also issued an order to show cause why Plaintiff should not be barred from future filings. *Id.* The judge entered the injunction after the Plaintiff indicated that he would proceed with additional litigation. *Id.* The Third Circuit affirmed, but ordered that the district court limit the scope of the bar order to preclude "any complaint or other paper *in any way* concerning Chipps' attendance at Kings College, his student loan, the collection of that loan, or any rulings by any administrative or judicial officers concerning the aforesaid matters." *Id.* (emphasis in original).

In the present matter, the Court finds that an injunction is appropriate because Plaintiff has engaged in a pattern of abusive and vexatious litigation that has compromised the valuable resources of both the judiciary and the growing number of defendants, many of whom have been mired in this litigation for nearly a decade. And, Yuhasz provides no compelling reasons in her papers as to why an injunction should not issue. The Court is aware that she may still have a case active in state court, but this ruling has no effect on that litigation and will not preclude her from litigating that case to its conclusion.

When an injunction is directed to prevent repetitive actions, as it is here, it should be limited "to the preclusion of future lawsuits arising out of the same matters that were the subject of the [prior] dismissed actions." *Gagliardi v. Mc*

Williams, 834 F.2d 81, 83 (3d Cir. 1987). Accordingly, the Court finds it appropriate to bar Plaintiff from filing, without first seeking leave of court, any complaint or other paper concerning and arising out of: (1) Ms. Yuhasz's employment as a court reporter, (2) the subsequent litigation of claims, and (3) the rulings by judicial or administrative officers concerning those claims. See *Matter of Packer Ave. Assoc.,* 884 F.2d 745 (3d Cir. 1989) (enjoining pro se from filing any action dealing with issues resolved in a bankruptcy case). In seeking leave of court, the litigant is directed to certify (1) that the lawsuit presents only new claims that have never before been raised and disposed of on the merits, (2) that the facts alleged in the new complaint are believed to be true, and (3) there is no reason to believe that the claims are foreclosed by controlling law. Should Plaintiff fail to provide a certification or file a false certification, the injunction is enforceable by contempt penalties and will result in sanctions. *See Gambrell,* 777 F. Supp. at 384.

III. CONCLUSION

The Court has complied with the guidelines set forth by the Third Circuit in *Brow,* issuing an order to show cause why injunctive relief should not issue, determining herein that an injunction barring future filings without leave of court is appropriate, and narrowly tailoring the scope of the injunctive relief to implement only the restraints deemed necessary in the instant case. *Brow,* 994 F.2d at 1038. An appropriate Order follows.

s/Joel A. Pisano

Dated: April 21, 2005 JOEL A. PISANO, U.S.D.J.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ, CSR, RPR.,

Civil Action
No. 03-02750

Plaintiff,

-v-

ORDER

CHIEF JUSTICE DEBORAH T. PORITZ, *et al.*

IT IS on this 24TH day of February, 2004, ORDERED that *pro se* Plaintiff Joanne N, Yuhas's motion for the recusal of the Honorable Dickinson R. Debevoise IS DENIED

s/Dickinson R. Debevoise

DICKINSON R. DEBEVOISE, U.S.S.D.J.

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2004 FEB 24 A 10:57
UNITED STATES
DISTRICT COURT

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ, CSR, RPR.,

Plaintiff,

v.

CHIEF JUSTICE DEBORAH T. PORITZ, *et al*

Civil Action
No. 03-02750

ORDER

This matter having been opened to the Court by motion of Defendants Christopher J. Carey, Andrew N. Kessler and Hoagland, Longo, Moran, Dunst & Doukas, LLP, for dismissal of the Complaint as to them and notice having been given to all parties, in consideration of the submissions, arguments of counsel, and for the reasons set forth in the Court's Opinion of even date,

IT IS, on this 27th of February 2004, ORDERED that Defendants' motion to dismiss the Complaint as to said Defendants is GRANTED in all respects, and the Complaint against those Defendants is dismissed with prejudice.

s/ Dickinson K. Debevoise
Dickinson K Debevoise, U.S.S.D.J.

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UNITED STATES
DISTRICT COURT

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ, CSR, RPR.,

Plaintiff,

v.

CHIEF JUSTICE DEBORAH T. PORITZ, *et al*

Civil Action No. 03-02750

ORDER

For the reasons set forth in Yuhasz v. Chief Justice Deborah T. Poritz, et al., No. 03- 02750, slip op. (D.N.J. February 27, 2004),

IT IS, on this 7th day of April, 2004, ORDERED that Ms. Yuhasz's motion for leave to file a RICO Case Statement and a Second Amended Complaint, and to postpone until these have been filed entry of judgment on the motions to dismiss of all Defendants named in her Amended Complaint, is DENIED,

s/Dickinson R. Debevoise

Dickinson R. Debevoise, US.S.D.J.

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DISTRICT COURT

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ, CSR, RPR.,

Plaintiff,

v.

CHIEF JUSTICE DEBORAH T. PORITZ, *et al*

Civil Action No. 03-02750

ORDER

This matter having been opened to the Court by motion of the Office of the Attorney General of New Jersey, for dismissal of the Amended Complaint as to the moving defendants (the New Jersey Administrative Office of the Courts and the Honorable Deborah T. Poritz, the Honorable Reginald Stanton, the Honorable James J. Ciancia, the Honorable Linda R. Feinberg, the Honorable Neil H. Shuster, the Honorable Paulette Sapp-Peterson, the Honorable Joseph A. Falcone, the Honorable Eugene J. Codey, Jr., the Honorable Philip M. Freedman, the Honorable Donald S. Goldman, the Honorable Edith K, Payne, the Honorable Theodore A. Winard, the Honorable Arthur Minuskin, the Honorable Michael P. King, the Honorable Ariel A. Rodriguez, the Honorable Steven L. Lefelt, the Honorable Joseph F. Lisa, the Honotable Ermine L. Conley, the Honorable Sylvia B. Pressler, and the Honorable James J, Petrella), and notice having been given to all parties, in consideration of the submissions, arguments of counsel, and for the reasons set forth in the Court's Opinion of even date,

IT IS, on this 12th day of April 2004, ORDERED that the Amended Complaint's federal claims against the moving defendants are dismissed with prejudice, and the Amended Complaint's state claims against the moving defendants are dismissed without prejudice.

s/Dickinson R. Debevoise

Dickinson R. Debevoise, U.S.S.D.J.

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2004 APR 12 P 2:51
UNITED STATES
DISTRICT COURT

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ, CSR, RPR.,

Plaintiff,

v.

CHIEF JUSTICE DEBORAH T. PORITZ, *et al*

Civil Action
No. 03-02750

ORDER

This matter having been opened to the Court by motion of Defendant John Kennedy for dismissal of the Complaint as to him and notice having been given to all parties, in consideration of the submissions, arguments of counsel, and for the reasons set forth in the Court's Opinion of even date,

IT IS, on this 11th day of June 2004 ORDERED that Defendant John Kennedy's motion to dismiss the Complaint is GRANTED in all respects, and the Complaint against him is dismissed with prejudice.

s/Dickinson R. Debevoise
Dickinson R. Debevoise, U.S.S.D.J.

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UNITED STATES
DISTRICT COURT

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ,

Plaintiff,

Civil Action No. 04-1508(JAP)

ORDER

v.

BRUCE D. LEDER, ESQ. et al.
Defendants.

Before this Court is *Pro* se Plaintiff Joanne Yuhasz's timely filed Affidavit seeking my recusal pursuant to 28 U.S.C. §144 and 28 U.S.C. §455(a). For the reasons expressed in the accompanying written opinion,

IT IS, on this 16th day of November, 2004
ORDERED that Plaintiffs motion fir my recusal from this matter is DENIED.

s/Joel A. Pisano
JOEL A. PISANO, U.S.D.J.

Original; Clerk
cc: All parties
File

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ,

Plaintiff,

Civil Action No. 04-1508(JAP)

ORDER

v.

BRUCE D. LEDER, ESQ. et al.
Defendants.

Before this Court are eleven motions to dismiss the complaint brought by various defendants, pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons expressed in the accompanying written opinion, IT IS

On this 18th day of February, 2005

ORDERED that Plaintiffs request for leave to file an amended complaint is DENIED, and IT IS FURTHER

ORDERED that Plaintiffs outstanding motion for default judgment is DENIED, and IT IS FURTHER

ORDERED that all motions to dismiss are GRANTED and Plaintiffs complaint is DISMISSED, with prejudice.

Original: Clerk s/JOEL A. PISANO. U.S.D.J.
cc. All Parties, File

Case 2:04-cv-01 508-JAP-MCA Document 91-1 Filed 04/25/2005 Page 1 of 2

CASE CLOSED

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ,

Civil Action No. 04-1508(JAP)

Plaintiff,

INJUNCTION

v.

BRUCE D. LEDER, ESQ. et al.
Defendants.

For the reasons expressed in the accompanying Opinion, dated April 22, *2005,* **IT IS ON** this 25TH day of April, 2005

ORDERED that Defendants' motion for a bar order is **GRANTED,** and Plaintiff is ENJOINED from filing, without first seeking leave of court, any complaint or other paper concerning and arising out of: (1) Ms. Yuhasz's employment as a court reporter, (2) the subsequent litigation of claims, and (3) the rulings by judicial or administrative officers concerning those claims.

In seeking leave of court, the litigant is directed to certify (1) that the lawsuit presents only new claims that have

never before been raised and disposed of on the merits, (2) that the facts alleged in the new complaint are believed to be true, and (3) there is no reason to believe that the claims are foreclosed by controlling law. Should Plaintiff fail to provide a certification or file a false certification, the injunction is enforceable by contempt penalties and will result in sanctions.

The clerk of the court is directed not to file any papers that may be submitted in violation of this court's order.

This case is **CLOSED.**

SO ORDERED.

s/ Joel A. Pisano
JOEL A. PISANO, U.S.D.J.

Original: Clerk
cc: All parties
File

Case 2:03-cv-02750-DRD-SDW Document 51-1 Filed 05/09/2005 Page 1 of 3

CLOSED

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOANNE N. YUHASZ,

Civil Action No. 03-2750(DRD)

Plaintiff,

ORDER OF DISMISSAL

v.

AND/OR

PURSUANT TO F.R.C.P. 54(b)

CHIEF JUSTICE DEBORAH T. PORTIZ,

Defendant.

It appearing to the court that:

1. On June 9, 2003 plaintiff, Joanne N. Yuhasz, filed her complaint naming as defendants a large number of State Justices and judges, state officials, lawyers and law firms, New Jersey court employees, union representatives of court reporters and others.

2. From time to time during the following year the court on motion of various of the parties and groups of parties dismissed the claims against them and was of the belief that after its order of June 16. 2004 all the claims and

all defendants had been dismissed. The case was then terminated.

3. Apparently plaintiff concluded that defendants Peter C. Harvey and Thompkins, McGuire had not been dismissed and on January 7, 2005, many months after she had filed a notice of appeal, filed a notice of voluntary dismissal dismissing her complaint against Peter C. Harvey and Thompkins' McGuire.

4. The Court of Appeals advised plaintiff that because her voluntary dismissal was not filed prior to service of answers or filing of summary judgment motions in the district court or was not by stipulation signed by the other parties it did not comply with Fed. R. Civ. P. 41(a)(1) and did not have the effect of dismissing those parties. Thus absent a direction and determination under Fed. R. Civ. P. 54(b) there does not exist a final order from which an appeal can be taken; and it appearing that plaintiff has now moved to certify as final all orders entered under Civil Action No. 03-02750; and the court determining and finding as follows:

1.The claims asserted against Peter C. Harvey and Thompkins, McGuire are frivolous and should be dismissed on the court's own motion if it has jurisdiction to do so.

2. Multiple parties have been joined in this action and multiple claims have been asserted against them, all of which the court has found to lack merit.

3. As stated above the remaining claims against Peter C. Harvey and Thompson, McGuire are frivolous, which plaintiff herself appears to recognize because she attempted to dismiss them voluntarily.

4. It is highly unlikely that the Court of Appeals will face multiple or duplicative appeals if an appeal is taken in this case in its present posture, and it would be unjust for the many defendants who have been dismissed from this case to face a renewal of this case in the district court were the two remaining defendants to be deemed still parties to the case and then were dismissed, which would start the time to file an appeal to start running once again.

In light of the foregoing, it is this 9th day of May, 2005;

ORDERED as follows:

1.If the court has jurisdiction to do so the complaint is dismissed with prejudice as against defendants Peter C. Harvey and Thompson, McGuire and as against any other defendant who may not have previously been dismissed from the case, and, in the alternative,

2. The court determines that there is no just reason for delay and pursuant to Fed. R. Civ. P. 54(b) directs the entry of final judgment dismissing the complaint against all defendants other than Peter C. Harvey and Thompson, McGuire with prejudice.

s/Dickinson R. Debevoise

DICKINSON R. DEBEVOISE
U.S.S.D.J.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-1660

JOANNE N. YUHASZ, CSR, RPR,
Appellant

V.

DEBORAH T. PORTTZ, et al.

(D.C. Civil No. 03-cv-02750)
District Judge: Honorable Dickinson R. Debevoise

Nos. 05-1838 & 05-2872

JOANNE N. YUHASZ,
Appellant

V.

BRUCE D. LEDER, ESQ., et al.

(D.C. Civil No. 04-cv-01508)
District Judge: Honorable Joel A. Pisano

On Appeal From the United States District Court
For the District of New Jersey

Submitted Under Third Circuit L.A.R. 34.1(a)
JANUARY 3, 2006

Before: ROTH, AMBRO AND VAN ANTWERPEN, Circuit Judges.

(Filed: February 15, 2006)

OPINION

PER CURIAM

Appellant Joanne Yuhasz appeals from multiple District Court orders in two separate but closely related federal suits. She filed four separate appeals, which were either withdrawn or consolidated here. For many of the same reasons given by the District Court, we will affirm.

I.

Over the past decade, Yuhasz has filed five state and three federal suits, against more than fifty Defendants. Her lawsuits are derivative in nature, i.e., persons who were only marginally affiliated with one suit often become named Defendants in the next, such as judges who presided over earlier cases, current and former New Jersey Attorney Generals, former employers and unions, her former attorneys, and even her former attorneys' attorneys. Despite the tortuous road paved by her duplicative snowballing suits, the parties are by now familiar with the facts, and we only briefly summarize them here.

From 1974 until her termination in 2000, Yuhasz was employed by the New Jersey Judiciary Administrative Office of the Courts (AOC) as a certified shorthand reporter. In 1991, she filed the first of many grievances with the AOC alleging sexual harassment and a hostile work environment.

She also retained counsel and filed unfair labor practice charges with the Public Employment Relations Commission (PERC). With several of her PERC charges still pending, Yuhasz filed her first state lawsuit in 1995. MER-L-2514-95 (suit 1). Since then, Yuhasz has filed four more state court actions, none of which has yet been successful.[1] Yuhasz filed her first federal suit, sixth overall, in April 2003. Yuhasz v. Rodriguez, D.N.J. No. 03-cv-01830. The parties entered into a consent agreement dismissing the complaint in November of the same year. Meanwhile, Yuhasz filed a second complaint in federal court. Yuhasz v. Poritz, D.N.J. No. 03-cv-02750. She named all of the parties to this appeal with the exception of Judge Debevoise, who presided over the proceedings.

The Defendants can be narrowed down into four main groups: (1) the Administrative Defendants;[2] (2) the Union Defendants;[3] (3) the Attorney Defendants;[4] and (4) the

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[1] See ESX-L-5833-99 (formerly MSR-L-1452-96)(suit 2); ESX-L-3975-99(formerly MRS-L-845-99)(suit 3); ESX-L-3281-00(suit 4); BUR-L-1778-04(formerly MER-L-1623-00)(suit 5). Suit 5 is still pending in the Burlington County Court with discovery ongoing.

[2] The Administrative Defendants include: Justice Deborah Poritz; the AOC; Attorney General Peter Harvey; Judge Reginald Stanton; Judge James Ciancia; and PERC. Often Yuhasz and the District Court treat the three judges as part of the Judicial Defendant category, but since none of them are being sued in their capacity as judges, ther are more appropriately placed here.

[3] The Union Defendants include: Office and Professional Employees International Union, Local 32 (OPEIU); Patrick Tully and Lois Cuccinello as agents of OPEIU; the Certified Shorthad Reporters Association of New Jersey (CSRA/NJ); Susan Scardilli and Edward Sajkowski as agenst for CSRA/NJ; and CSRA/NJ Collective Bargaining Committee.

[4] The Attorney Defendants include: Stephen Weinstein; Stephen Weinstein, P.C. (represented Yuhasz in grievance proceedings before PERC); Bruce Leder (represented Yuhasz from 1992-96); Schneider, Goldberger, Cohen, Finn, Solomon, Leder & Montalbano, P.C.; Joel Selikoff (represented Yuhasz in 1995-96); Michael Damm (represented Yuhasz in 1995-96); Selikoff & Cohen, P.C.; Keith McKenna

Judicial Defendants.[5] Her claims can also be divided into four distinct types: first, the Administrative Defendants transferred and terminated her employment in retaliation for filing administrative grievances, a violation of the First and Fourteenth Amendments; second, nearly all the Defendants violated the Racketeer Influenced and Corrupt Organization Act (RICO), 18 U.S.C. §§ 1961-1968, by covering up fraudulent union and AOC activities; third, the Attorney Defendants committed legal malpractice, tortious interference, and abuse of process in conspiracy with the other Defendants to conceal monetary thefts; and fourth, nearly all of the Defendants conspired to terminate Yuhasz's employment in an attempt to conceal monetary theft and illegal union activity. Yuhasz also raised several state law claims relating to the same conduct.

A number of Defendants filed motions to dismiss. Yuhasz responded by moving for Judge Debevoise's recusal. The District Court denied the motion and dismissed the complaint against certain Attorney Defendants, the AOC, and the Judicial Defendants for a number of reasons. Yuhasz then

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(represented Yuhasz in PERC proceedings); Anthony Ambrosio (same); Ambrosio, Kyreakakis, DiLorenzo, Moraff & McKenna; William Courtney (filed PERC charges on Yuhasz's behalf); Christopher Carey (represented Stephen Weinstein in suit 2); Tompkins, McGuire, Wachnfeld & Barry (Carey's Law firm at the time); John Kennedy (represented Bruce Leder in suit 2); O'Donnell, Kennedy, Vespole & Piechta; Andrew Kessler (Represented Joel Selikoff in suit 2); Hoagland, Longo, Moran, Dunst & Doukas (Kessler's firm); Bruce Seidman (represented CSRA/NJ and its employees in suit 4); DeVeauz & Seidman; Robert Henninger (represented OPEIU in suit 4); and Spear, Wilderman, Borishm, Endy, Spear & Runckel (same).

[5] The Judicial Defendants include: Judge Linda Feinberg; Judge Neil Shuster; Judge Paulette Sapp-Peterson; Judge Joseph Falcone; Judge Eugene Codey; Judge Philip Freedman; Judge Donald Goldman: Judge Edith Payne; Judge Theodore Winard; Judge Arthur Minuskin; Judge Michael King; Judge Ariel Rodriguez; Judge Steven Lefelt; Judge Joseph Lisa; Judge Ermine Conley; Judge Sylvia Pressler; and Judge James Petrella.

voluntarily dismissed most of the remaining Attorney Defendants. A few Defendants remained, and the claims against them were eventually dismissed. Yuhasz appealed.

In the meantime, Yuhasz filed her third federal suit, which was assigned to Judge Pisano. Yuhasz v. Leder, D.N.J. No. 04-01508. The complaint is practically identical to the one in 04-cv-02750 except that Judge Debevoise is named as an additional defendant. However, Chief Judge Bissell immediately dismissed this claim as frivolous. On November 24, 2004, Yuhasz moved for Judge Pisano's recusal, which he denied. After extensive briefing, Judge Pisano dismissed the complaint against all of the Defendants. Prior to the dismissal, however, several Defendants moved for an order barring Yuhasz from filing any future documents without first obtaining leave of court. Judge Pisano granted the motion. Yuhasz appealed both orders. We consolidated her appeals with her appeals from 03-cv-02750.[6]

II.

Yuhasz raises twelve challenges to the decisions below, dividing them evenly between the District Court cases. However, many of the arguments overlap. Essentially, Yuhasz challenges the denial of her recusal motions, Judge Debevoise's denial of her motion to file a RICO case statement, both Judges' orders denying her motions to amend the complaint, Judge Pisano's order barring her from filing without obtaining leave, and the dismissal of the Defendants in each matter. We first address the appeals from 03-cv-02750, and then turn to 03-cv-01508.

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[6] We have jurisdiction under 28 U.S.C. § 1291. Yuhasz also moves to supplement the record. After reviewing the proffered supplement, we will deny the motion. See Fed. R. App. P. 10(e); In re Cmty. Bank of N. Va., 418 F.3d 277, 317 n. 32 (3d Cir. 2005).

A Appeal from 03-cv-02750

With respect to Yuhasz's challenges relating to the orders denying her motion for recusal, her motion for the inclusion of a RICO statement, and her motion to amend, each is plainly without merit. Yuhasz argues that recusal was warranted because Attorney General Peter Harvey was Judge Debevoise's law clerk in 1982-83 and the court reporter is an unnamed Defendant. Neither relationship on its face raises an appearance of wrongful or inappropriate bias or prejudice. See generally Mitchael v. Intracorp, Inc., 179 F.3d 847 (10th Cir. 1999) (finding recusal not warranted where judge formerly represented defendant and defendants were now represented by the judge's former partner). We find no abuse of discretion. SecuraComm Consulting, Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000).

She next argues that Judge Debevoise erred by denying her motion to file a RICO case statement pursuant to the local rules of the District of New Jersey and denying her motion to amend her complaint. A District Court has discretion to order the filing of a RICO statement. See Northland Ins. Co. v. Shell Oil Co., 930 F. Supp. 1069, 1073 (D.N.J. 1996). Yuhasz's complaint more than adequately sets forth her alleged claim, eliminating the need for a more developed statement. Similarly, permitting the filing of an amended complaint is within the District Court's discretion. Lake v. Arnold, 232 F.3d 360, 373-74 (3d Cir. 2000). Yuhasz's failure to supply a draft of the proposed amendments with her motion is sufficient under the local rules to justify the denial. Id. The District Court did not abuse its discretion in either instance.

We must also address Yuhasz's argument that the dismissals must be reversed because the District Court improperly converted the motions to dismiss to motions for summary judgment by examining evidence outside the

complaint. When reviewing a complaint under Federal Rule of Civil Procedure 12(b)(6), a court may examine the facts as alleged in the pleadings as well as "matters of public record, orders, exhibits attached to the complaint, and items appearing in the record of the case." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384, 1385 n.2 (3d Cir. 1994) (citations omitted). It does not appear that Judge Debevoise examined any evidence not properly before the Court on a motion to dismiss. Thus, we turn to the dismissals.

We review the grant of a motion to dismiss de novo. Alston v. Parker, 363 F.3d 229, 232-33 (3d Cir. 2004). Yuhasz specifically challenges only the dismissal of certain Attorney Defendants; the Judicial Defendants; and a few of the Administrative Defendants. She fails to state a claim under RICO against any of the Defendants because her allegations, even if true, do not satisfy the elements of the cause of action.

A claim under 18 U.S.C. § 1962(c) requires a showing of "racketeering activity." § 1962(c); Rose v. Bartle, 871 F.2d 331, 359 (3d Cir. 1989). A racketeering activity must be either a specified federal offense or "any act involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical. . . chargeable under State law and punishable by imprisonment for more than one year." 18 U.S.C. § 1961(1). Her allegations of fraud almost parallel the crime of extortion. N.J. Stat. Ann. § 2C:20-5. However, Yuhasz does not allege that any Defendant threatened her with conduct prohibited under the statute, an essential element of the crime. N.J. Stat. Ann § 2C:20-5. Thus, the District Court properly dismissed her RICO claims

Turning to each specific Defendant, applying New Jersey's preclusion law, the claims against the Attorney

Defendants are barred under the entire controversy doctrine. See Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81(1984) (requiring the application of state preclusion principles). The doctrine provides that "[n]on-joinder of claims or parties required to be joined by the. . . doctrine shall result in the preclusion of the omitted claims . . . ." N.J. Ct. R.4:30A; Fields v. Thompson Printing Co., Inc., 363 F.3d 259, 265 (3d Cir. 2004). To fall under the doctrine, a claim must relate to the same facts or transaction. See DiTrolio v. Antiles, 662 A.2d 494, 502 (N.J. *1995).* The Attorney Defendants were first named in suit 3. There, Yuhasz did not bring her § 1983 claims, but instead alleged malpractice and abuse of process. However, § 1983 claims are actionable in state court. Felder v. Casey, 487 U.S. 131, 139 (1988). Since the allegation is that the Attorney Defendants conspired with the other Defendants to conceal fraudulent activities, the claims arise from the same related facts. Thus, the Attorney Defendants were properly dismissed.

With respect to Justice Poritz, Judge Stanton, and Judge Ciancia, the District Court also correctly dismissed the claims. Although her RICO claims must fail, Yuhasz also raises First Amendment and due process claims. All three Judges are Administrative Defendants considering they are being sued in their employment, not judicial, capacity. The claims against Judge Stanton stem, in part, from her original transfer, which she claims was retaliatory. However, she fails to state a claim because, by her own admission, Judge Stanton decided to transfer Yuhasz prior to the filing of any grievances. Pl.'s App. at 298 ¶ 47. Thus, no retaliation can be shown. Brennan v. Norton, 350 F.3d 399, 412-14 (3d Cir. 2004). She also makes broad assertions that Judge Stanton violated the First and Fourteenth Amendments by obstructing her ability to file a civil complaint. She bases her assertion on two letters written by Judge Stanton to Judges Falcone and Feinberg explaining that Yuhasz served him with a subpoena, but he could not testify on the day scheduled unless

otherwise ordered to do so. These letters in no manner violate any constitutional right or established procedural process.

Similarly, these claims fails against Justice Poritz and Judge Ciancia. Yuhasz alleges that Justice Poritz approved of Judge Ciancia's failure to provide a disciplinary notice prior to termination as required by N.J. Admin. Code. § 4A:2-2.5. However, Yuhasz states that she was told a termination hearing would be available, but when she requested a hearing, the AOC denied her request. The statute does not necessarily entitle an employee to written notice. Further, § 4A:2-2.5(c) provides that the right to a hearing is waived if not requested within five days. Yuhasz fails to state whether she made a timely request. Thus, she fails to allege a due process violation. Moreover, it is not clear from her complaint that either Justice Poritz or Judge Ciancia was responsible for either providing notice or denying her a hearing.

With respect to the Judicial Defendants, Yuhasz' claims are barred by either absolute judicial immunity or the Rooker-Feidman doctrine. To the extent her claims seek monetary damages for conduct performed in an official capacity, absolute immunity applies. See Mireles v. Waco, 502 U.S. 9, 9 (1991); Gallas v. Supreme Ct. of Pennsylvania, 211 F.3d 760, 768 (3d Cir. 2000). To the extent her claims seek the reversal of any substantive order or ruling, which it appears that they do, the claims are barred by Rooker-Feldman. See Exxon Mobile Corp v. Saudi Basic Indus. Corp., 125 S. Ct. 1517, 1523-24 (2005) (explaining the doctrine bars claims that would necessarily require review of a state court's decision).

Finally, we affirm the dismissal of the claims against Peter Harvey and Thompson, McGuire. Her claims against both reflect the basic theme underlying this entire litigation, that the Defendants conspired together to conceal monetary

theft by the Union Defendants. She provides no evidentiary support for her claims against either Defendant. We agree that her claims are frivolous. In sum, we affirm Judge Debevoise's orders.

B. Appeal from 04-cv-01508

This suit is a mirror image of 03-cv-02750. Yuhasz also makes similar arguments in her appeal. With respect to the appeals from the orders denying her motion to recuse and her motion to amend the complaint, we conclude that the District Court did not abuse its discretion. See SecuraComm Consulting, Inc., 224 F.3d at 278 (recusal); Lake, 232 F.3d at 373-74 (amended complaint). Yuhasz alleges that Judge Pisano exhibited prejudice by denying her motion for an extension of time because she was disabled. She also claims that Judge Pisano interfered with a grand jury investigation because his order denying her motion to stay the proceedings was issued prior to the U.S. Attorney's Office declining to pursue an investigation. Neither of these accusations is sufficient to show an abuse of discretion in denying the motion to recuse. An unfavorable ruling is not a basis for recusal. See SecuraComm Consulting, Inc., 224 F.3d at 278. Nor is it unreasonable to deny a third motion for an extension of time when it is abundantly clear that Yuhasz is capable of reading her paperwork and filing documents in court. See Boley v. Kaymark, 123 F.3d 756, 758 (3d Cir. 1997) (applying an abuse of discretion standard of review). Additionally, the coincidence that Judge Pisano's order denying the stay motion and the Attorney General's letter declining to investigate arrived within one day of the other does not in any manner evidence an ex parte communication. See United States v. Vespe, 868 F.2d 1328, 1340 (3d Cir. 1989) (stating conclusory statements need not be credited). Judge Pisano did not abuse his discretion in denying the motion to recuse.

Nor did the District Court abuse its discretion in denying the motion to amend. Although the District Court did not provide any reasons for the denial, the proposed amendment essentially responds to various motions to dismiss. The opinion dismissing the complaint adequately sets forth reasons for denying the motion to amend. We also agree with the District Court that the claims against the Defendants who were also a party to 03-cv-02750 are barred under res judicata. See Lubrizol Corp. v. Exxon Corp., 929 F.2d 960, 963 (3d Cir. 1991).

Although Judge Debevoise's decisions do not have a preclusive effect on the Defendants voluntarily dismissed from the earlier federal suit, state preclusion laws still apply. The remaining Defendants include the CSRA/NJ and its representatives; the CSRA/NJ Collective Bargaining Association; the OPEIU, Local 32 and its representatives; PERC; and the Attorney Defendants not discussed above. With respect to the Union Defendants, Yuhasz's claims are barred by res judicata and the entire controversy doctrine. Yuhasz raised her non-constitutional claims and lost on the merits in suit 4. See Jones v. Holvey, 29 F.3d 828, 830 (3d Cir. 1994) (applying New Jersey's res judicata law). Her constitutional claims were available when she filed suit 4, were related to the same facts, and should have been brought at that time. See DiTrolio, 662 A.2d at 501-02.

The claims against all of the Attorney Defendants, with the exception of Seidman, Henninger, and their respective firms are also barred by the same principles. To the extent Yuhasz raises malpractice, abuse of process, and other state law claims, res judicata applies. All of the Attorney Defendants were originally named in either suit 2, 3, or 4 and the state courts found the claims meritless. See Jones, 29 F.3d at 830. We recognize that Yuhasz does not expressly bring malpractice claims in her federal suit, but the entire controversy doctrine equally bars her alleged

conspiracy allegations, which she claims occurred between 1995 and 2000. See DiTrolio, 662 A.2d at 501-02.

The claims against Siedman, Henninger, and their respective firms were brought for the first time in federal court. The complaint makes no specific allegations other than that the Attorneys were involved in a conspiracy to cover up an "illegal union takeover." Yuhasz raised this claim against other Defendants in suit 4, and Judge Winard found that no union takeover existed. Collateral estoppel prevents this fact from being re-litigated here. See Houbigant, Inc. v. Fed. Ins. Co., 374 F.3d 192, 204 (3d Cir. 2004). The claims against PERC and the Office of the Attorney General also, fail for several reasons, but it suffices to say that the claims are barred under the statute of limitations. See N.J. Stat. Ann. § 2A:14-2; Genty v. Resolution Trust Corp., 937 F.2d 899, 919 (3d Cir. 1991) (two years). Thus, the District Court properly dismissed the complaint against all of the Defendants.

Finally, we are asked to review whether Judge Pisano abused his discretion in granting the Defendants' motion to bar Yuhasz from "filing, without first seeking leave of court, any complaint or other paper concerning and arising out of: (1) Ms. Yuhasz's employment as a court reporter, (2) the subsequent litigation of claims, and (3) the rulings by judicial or administrative officers concerning those claims." Order entered Apr. 27, 2005. An injunction is an extreme remedy, but we will affirm the grant of an injunction if the enjoined litigant was given notice and opportunity to be heard, and the injunction is narrowly tailored to fit the particular circumstances of the case. See Brow v. Farrelly, 994 F.2d 1027, 1038-39 (3d Cir. 1993); In Re: Packer Ave. Assocs., 884 F.2d 745, 747 (3d Cir. 1989). Yuhasz was given notice and the District Court issued an order to show cause. Further, we agree with the District Court that this litigation must come to an end. Yuhasz has burdened nearly every person even remotely connected to this lawsuit, including several courts

and numerous judges. The District Court's order bars only actions relating to this matter and provides sufficient safeguards to ensure that Yuhasz's access to the courts is not permanently and unnecessarily restricted. We hold that the District Court did not abuse its discretion.

For all of the reasons given above, and for the reasons provided in the several District Court opinions, we will affirm the orders of the District Court.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-1660

JOANNE N. YUHASZ, CSR, RPR,

Appellant

V.

DEBORAH T. PORITZ, et al.

(D.C. Civil No. 03-cv-02750)
District Judge: Honorable Dickinson R. Debevoise

Nos. 05-183 8 & 05-2872

JOANNE N. YUHASZ,

Appellant

V.

BRUCE D. LEDER, ESQ., et al.

(D.C. Civil No. 04-cv-0 1508)
District Judge: Honorable Joel A. Pisano

On Appeal From the United States District Court
For the District of New Jersey

Submitted Under Third Circuit L.A.R. 34.1(a)
JANUARY 3, 2006

Before: ROTH, AMBRO AND VANANTWERPEN,
Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Courts for the District of New Jersey and was submitted pursuant to Third Circuit L.A.R. 34.1(a). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgments of the District Court (03-cv-02750) entered February 27, 2004, March 4, 2004, April 12, 2004, April 16, 2004, June 16, 2004, and May 9, 2005, and the judgments of the District Court (04-cv- 01508) entered February 23, 2005, and April 27, 2005, be and the same are hereby affirmed. Appellant's motion to supplement the record is denied. Costs to be taxed against Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Marcia M. Waldron
Clerk

DATED: 15 February 2006

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NOS. 05-1660, 05-1838, & 05-2872 (consolidated)

JOANNE N. YUHASZ,
Appellant

v.

BRUCE D. LEDER, ESQ., ET AL.

Before: SCIRICA, Chief Judge. SLOVITER, ROTH, MCKEE, RENDELL, AMBRO, FUENTES, SMITH, FISHER, and VAN ANTWERPEN, Circuit Judges.

ORDER

The petition for rehearing en banc filed by the Appellant Joanne N. Yuhasz in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,
/s/ JANE R. ROTH
Circuit Judge

Dated: March 23,2006

A-135

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

April 19, 2006

No. 05-1660

JOANNE N. YUHASZ, CSR, RPR,

Appellant

v.

DEBORAH T. PORITZ, et al.
(N.J. (Newark) D.C. Civil No. 03-cv-02750)

Nos. 05-183 8 & 05-2872
JOANNE N. YUHASZ,

Appellant

v.

BRUCE D. LEDER, ESQ., et al.
(N.J. (Newark) D.C. Civil No. 04-cv-01508)

Present:
ROTH, AMBRO and VAN ANTWERPEN, Circuit Judges.

Motion by Appellant Pro Se to recall the mandate pending the resolution of the Petition for a Writ of Certiorari in the United States Supreme Court.

/s/ Anthony Infante
Anthony Infante
Case Manager 267-299-4916

Mandate Issued on 3/31/06.

Response to Motion due 5/1/06.

ORDER

The foregoing motion to recall the mandate is **denied.**

By the Court,
/s/ Jane R. Roth
Circuit Judge

Dated: 21 April 2006

FILED WITH THE COURT
MAR 24 2006
CHAMBERS OF
MARIE WHITE BELL, J.S.C.

SUPERIOR COURT OF NEW JERSEY LAW DIVISION – BURLINGTON COUNTY DOCKET NO. BUR-L-1778-04

JOANNE N. YUHASZ, CSR, RPR. **CIVIL ACTION**
188 Camden Road
Parsippany, New Jersey *07054-2529*
(973) 887-7966 Fax: (973) 887-7966
Plaintiff

JOANNE N. YUHASZ, CSR, RPR.
Plaintiff,

v.

JUDICIARY of the STATE OF NEW JERSEY, JEFFREY A. NEWMAN, individually and in his official capacity; JOHN J. MUSEWICZ, individually and in his official capacity;' TERENCE E. NEADD, individually and in his official capacity; RAYMOND J. MASTANDREA, individually and in his official capacity; HONORABLE REGINALD STANTON, individually and in his official capacity; official capacity; ELAINE D. DIETRICH, individually and in her official capacity; MARK-A. ROSENEAUM, individually and in his official capacity; and JOHN DOES 1 through 20, fictitious names for administrators, officers, agents and employees of the JUDICIARY of the STATE OF NEW JERSEY, LOCAL 32 OPEIU, CSRA/NJ and LOCAL 32/O.C.R.,
Defendants.

CONSENT ORDER PLACING COMPLAINT BUR-L-1778-04 ON THE INACTIVE LIST UNTIL SEPTEMBER 5, 2006

THIS MATTER having been opened to the Court by the Plaintiff Joanne N. Yuhasz, CSR, RPR, appearing pro se, and Lisa Dorio Ruch, Deputy Attorney General, Office of the Attorney General, counsel for the Defendants, having consented hereto and for good cause shown,

IT IS on this 24th day of March, 2006,

ORDERED that Complaint BUR-L-1778-04 and any Answer(s) thereto of the Defendants herein be and the same are hereby stayed and shall remain inactive until September 5, 2006; and it is further

ORDERED that any and all discovery, proceedings and/or motions herein be and the same are hereby stayed and shall remain inactive until September 5, 2006; and it is further

ORDERED that a copy of this Order be served upon all parties within _____ days of the date hereof.

S/Marie White Bell
HONO1ABLE MARIE WHITE BELL, J.S.C.

I hereby consent to the form and entry of the within Order

s/Joanne N. Yuhasz, DSR, RPR.
JOANNE N. YUHASZ, CSR, RPR.
Plaintiff Pro Se

Dated:March 17, 2006.

I hereby consent to the form and entry of the within Order

s/Lisa Dorio Ruch
LISA DORIO RUCH, Deputy Atty. General
Office of the Attorney General
Attorney for the Defendants.

Dated: March 20, 2006